

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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EXECUTIVE DOCUMENTS

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

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

Calling the Sixty-Second Legislature Into the Sixth Extraordinary Session, Utah Proclamation No. 2017-6E

PROCLAMATION

WHEREAS, since the close of the 2017 General Session of the 62nd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 62nd Legislature of the State of Utah into the Sixth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 15th day of November 2017, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2017 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 9th day of November 2017.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2017/06/E

NOTICES OF PROPOSED RULES

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

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 2, 2018. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 31, 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

Education, Administration
R277-469
 Instructional Materials Commission
 Operating Procedures

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 42322
 FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-469 is amended to provide clarification to provisions regarding the book depository, and provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Rule R277-469 is amended to provide clarification to provisions regarding the book depository that includes new and updated definitions, revised terminology, and technical and conforming changes in accordance with the Rulewriting Manual for Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1-401 and Section 53A-14-101 and Section 53A-14-107

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments to Rule R277-469 will likely not result in a cost or savings to the state budget. The changes update procedures regarding the book depository to provide clarification.
- ◆ LOCAL GOVERNMENTS: The amendments to Rule R277-469 will likely not result in a cost or savings to local governments. The changes update procedures regarding the book depository to provide clarification.
- ◆ SMALL BUSINESSES: The amendments to Rule R277-469 will likely not result in a cost or savings to small businesses. The changes update procedures regarding the book depository to provide clarification. There is no change to existing costs resulting from the rule amendments.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-469 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The changes update procedures regarding the book depository to provide clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-469 will likely not result in any compliance costs for affected persons. The changes update procedures regarding the book depository to provide clarification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses. There is no change to existing costs resulting from the rule amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

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

R277. Education, Administration.

R277-469. Instructional Materials Commission Operating Procedures.

R277-469-[2]1. Authority and Purpose.

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

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

(c) Section 53A-14-101, which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board[-by]; and

(d) Section 53A-14-107, which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation[-and its placement on a public website, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities].

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

(a) provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools[-];

(b) ~~[The rule also]~~ provide[s] for mapping and alignment of primary instructional materials to the Core consistent with Utah law[-]; and

(c) provide rules for purchase and distribution of instructional materials within the state.

R277-469-~~1~~2. Definitions.

~~[A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.~~

~~B. "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.~~

~~C. "Board" means the Utah State Board of Education.~~

~~D.](1) "Commission" means the Instructional Materials Commission established in accordance with Section 53A-14-101.~~

(2) "Core" means the core standards adopted by the Board in R277-700.

~~[E.](3) "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, [objectives] and assessments set by the state [or school district] for specific courses or grade levels.~~

(4) "Depository" means a business dedicated to storing and distributing resources or materials in sufficient quantities to insure rapid and efficient delivery to LEAs.

~~[F. "Curriculum map" means a visual representation listing topics in the instructional materials that are correlated to the standards, objectives and indicators of the Utah Core.~~

~~G.](5)(a) "Instructional materials" means systematically arranged content in text, digital, Braille and large print, [and] or audio format which may be used within the state curriculum framework for courses of study by students in public schools[-];~~

(b) "Instructional materials" [including] include:

(i) textbooks[-];

(ii) workbooks[-];

(iii) computer software[-];

(iv) online or internet courses[-];

(v) CDs or DVDs[-]; and

(vi) multiple forms of communication media.

~~[Such]"Instructional materials" may be used by students or teachers or both as principal sources of study to cover any portion of [the]a course.~~

(d) [These]"Instructional materials":

(1) i) [shall be]are designed for student use;[-and]

(2) ii) may be accompanied by or contain teaching guides and study helps;

(3) iii) shall include all textbooks, workbooks, [and-] student materials, [and-]supplements, and online and digital materials necessary for a student to fully participate in coursework; and

~~(4) iv) shall be high quality, research-based [and proven to be effective in]materials for supporting student learning.~~

~~[H.](6) "Independent party" means an entity that is not part of or related to:~~

~~(a) the Board[-];~~

~~(b) [not the superintendent of public instruction or USOE]Board staff[-];[-or]~~

~~(c) an employee or governing board member of [a school district] an LEA[-];[-or]~~

~~(d) the [instructional materials] creator or publisher of instructional materials under review[-]; or~~

~~(e) anyone with a financial interest [in the instructional materials], however minimal, in instructional materials under review.~~

(7) "Instructional Materials Commission" or "Commission" means the commission appointed by the Board in accordance with Section 53A-14-101.

~~[I.](8) "Integrated instructional program" means any combination of instructional materials for students, including:~~

~~(a) textbooks[-];~~

~~(b) workbooks[-];~~

~~(c) software[-];~~

~~(d) videos[-, transparencies,-];~~

~~(e) electronic devices[-]; or~~

~~(f) similar resources[-used for classroom instruction of students].~~

~~[J.](9) "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.~~

~~[K. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.~~

~~](10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

(11) "Mapping" means creating a visual representation listing topics in instructional materials in correlation to the standards of the Utah core.

~~[L.](12) "National Instructional Materials Access Center" or [("NIMAC")] [is a central national repository established at the American Printing House for the Blind (APH) to store and to maintain NIMAS file sets. It features an automated system for allowing publishers to deposit NIMAS conformant files within the repository. Files are checked at the Utah State Instructional Materials Access Center (USIMAC), as defined in R277-469-1S, to confirm that they are valid NIMAS conformant files and then cataloged in a web-based database. Those who have been authorized for access have user identifications and passwords. These authorized users may search the NIMAC database and directly download the file(s) they need to convert into accessible instructional materials for those students who are in elementary and secondary schools and have qualifying disabilities.] means the same as that term is defined in Subsection R277-800-2(14).~~

~~[M.](13) "National Instructional Materials Accessibility Standard" or [("NIMAS")] [is a technical standard used by publishers to produce consistent and valid XML-based source files~~

that may be used to develop multiple specialized formats, such as Braille, large print, digital, or audio books, for students with print disabilities.] means the same as that term is defined in Subsection R277-800-2(15).

[N. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

—(14) "Not sampled" means instructional materials that were included in a publisher bid for evaluation by the Instructional Materials Commission, but which were not sampled to the Superintendent or the Commission.

[O.](15) "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in Sections R277-700-4[, 5, and 6] through R277-700-6.

[P. "Public website" means a website designated by the USOE provided by the publisher of instructional materials, free of charge, to teachers and the general public, to exhibit alignment and mapping to the Core for Utah primary instructional materials.

[Q.](16) "Recommended instructional materials" or "[RIMs]" means the recommended instructional materials searchable database provided as a free service by the [USOE] Board for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers [and on the public website of the publisher, if applicable,] for review by the Commission and approval of the Board.

(17) "Recommended limited" means instructional materials that are in limited alignment with the Core requirements or are narrow or restricted in their scope and sequence.

(18) "Recommended primary" means instructional materials that:

(a) are in alignment with content, philosophy, and instructional strategies of the Core;

(b) have been mapped and aligned to the Core, consistent with Section 53A-14-107;

(c) are appropriate for use by students as principal sources of study; and

(d) support Core requirements.

(19) "Recommended student resource" means instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource, which may provide valuable content information for students.

(20) "Recommended teacher resource" means instructional materials that are appropriate as resource materials for use by teachers.

(21) "Reviewed, but not recommended" means instructional materials that an LEA is strongly cautioned against using because the materials:

(a) do not align with the Core;

(b) are inaccurate in content;

(c) include misleading connotations;

(d) contain undesirable presentation; or

(e) are in conflict with existing law or rule.

[R. "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite

for graduation from Utah's secondary schools. The Core is provided in R277-700.

[S.](22) "Utah State Instructional Materials Access Center" or "[USIMAC]" [is a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities] means the same as that term is defined in Subsection R277-800-2(21).

[T. "USOE" means the Utah State Office of Education.]

R277-469-3. Use of State Funds for Instructional Materials.

[A. School districts may use funds:]

(1) An LEA may use state funds for any primary supplemental or supportive instructional materials that support Core requirements.

(2) An LEA may select and approve [for] instructional materials [selected and approved by a school or school district] consistent with:

(a) the standards of this [rule] R277-469; [and:]

([a]b) [consistent with] established local board procedures and timelines; [and]

([b]c) [consistent with] Subsection 53A-13-101(1)(c)(iii);

[or] and

([e]d) [consistent with] Subsection 53A-14-102(4).

[B.](3) A [S] school[s] or school district[s] that uses any funding source to purchase materials that have not been recommended or selected consistent with state law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401[(3)](8)(a)(ii).

[C. Free instructional materials:]

[(1)3](a) An LEA may use free instructional materials that are used as primary instructional materials or that are part of primary integrated instructional programs [shall be] subject to the same independent party evaluation and Core mapping as basal or Core material [or].

[(2)2]b) [if] If an LEA receives free materials [are provided] as part of a supplemental program, the [y] LEA may [be] use [d] the materials as student instructional materials only consistent with the law and this [rule; and] R277-469.

[(3) shall be reviewed and recommended by the Commission or by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

[D. Charter schools are exempt from Section 53A-14-107. Despite this exemption and consistent 34 CFR 300.172(e) (2007 edition), hereby incorporated by reference, all public schools subject to a state education agency that contracts with NIMAC require publishers with whom the public schools under the control of the state education agency contract to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS or purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.] (4) An LEA shall include a requirement in all publisher contracts for instructional materials that the publisher shall:

(a) prepare and provide electronic files of all instructional materials in the NIMAS format to NIMAC on or before delivery of print instructional materials; or

(b) provide instructional materials that are produced in, or may be rendered in, specialized formats.

~~[E. Notice to publishers]~~

~~[(1)5](a) [All traditional and charter public schools shall be responsible for notifying]An LEA shall provide timely notice to all publishers with whom the[~~y~~] LEA contracts for instructional materials [beginning October 1, 2008] that all materials shall be provided consistent with [R277-469-3D]Subsection (4).~~

~~[(2)2]b [Traditional and charter schools]An LEA's notice shall include a copy of this R277-469[~~], drawing publishers' attention to this provision of the rule, with the notice to publishers from whom the schools purchase materials.~~~~

~~—————(3) Schools shall provide publishers with timely notice of this requirement].~~

R277-469-4. Instructional Materials Commission Members Terms of Service.

~~[A-](1) [Members shall be appointed from categories designated in]The Board shall appoint members of the Instructional Materials Commission in accordance with Section 53A-14-101.~~

~~[B-](2)(a) A [M]member[s] appointed in accordance with Subsection (1)[of the Commission] shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission.~~

~~(b) A [M]member[s] may apply for reappointment [for]to one additional term.~~

~~[C-](3) The Commission may establish subcommittees as needed.~~

R277-469-5. Commission Review of Materials.

~~[A-](1) The Instructional Materials Commission shall primarily[The primary] focus [of instructional materials]on reviewing [shall be]materials used in subjects aligned with Core requirements to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.~~

~~[B-](2) The Commission shall determine [S]subject areas and timelines for review [shall be determined by the Commission] based on school district and charter school needs and requests, [and] using forms and procedures provided by the [USOE]Superintendent.~~

~~[C- Commission review of material takes place at least annually.](3) The Commission shall meet to review materials at least semi-annually.~~

R277-469-6. Review and Adoption Categories.

~~—————Materials may be considered for review by the Commission and designated under the following categories. They may be purchased with state funds and used consistent with this rule:]~~

~~(4) Following its evaluation of a submitted item, the Commission shall recommend that the Board classify materials in one of the following categories:~~

~~(a) Recommended primary;~~

~~(b) Recommended limited;~~

~~(c) Recommended teacher resource;~~

~~(d) Recommended student resource;~~

~~(e) Reviewed, but not recommended; or~~

~~(f) Not sampled.~~

~~[A- Recommended-Primary: Instructional materials that:~~

~~—————(1) are in alignment with content, philosophy and instructional strategies of the Core;~~

~~—————(2) have been mapped and aligned to the Core, consistent with Section 53A-14-107 after the 2012-2013 school year;~~

~~—————(2) are appropriate for use by students as principal sources of study;~~

~~—————(3) provide comprehensive coverage of course content; and~~

~~—————(4) support Core requirements.~~

~~—————B. Recommended Limited: Instructional materials that are in limited alignment with the Core requirements or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.~~

~~—————C. Recommended Teacher Resource: Instructional materials that are appropriate as resource materials for use by teachers.~~

~~—————D. Recommended Student Resource: Instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.~~

~~—————E. Reviewed, but not Recommended: Instructional materials that may not be aligned with the Core, may be inaccurate in content, include misleading connotations, contain undesirable presentation, or are in conflict with existing law and rules. School districts are strongly cautioned against using these materials.~~

~~—————F. Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.]~~

R277-469-[7]6. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

~~[A- Instructional materials shall:](1) The Instructional Materials Commission and the Board, in reviewing whether to recommend instructional materials, may consider whether the instructional materials:~~

~~[(1)a] [be] are consistent with Core requirements [or] both];~~

~~[(2)b] [if used as primary materials, be]are mapped and aligned to the Core [consistent with Section 53A-14-107] and state adopted assessments [as applicable for the 2012-2013 school year]if planned for use as primary materials;~~

~~[(3)c] [be]are high quality, research-based, and proven to be effective in supporting student learning;~~

~~[(4)d] provide an objective and balanced viewpoint on issues;~~

~~[(5)e] include enrichment and extension possibilities;~~

~~[(6)f] [be]are appropriate to varying levels of learning;~~

~~[(7)g] [be]are accurate and factual;~~

~~[(8)h] [be]are arranged chronologically or systematically, or both;~~

~~[(9)i] reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;~~

~~[(10)j] [be]are free from sexual, ethnic, age, gender or disability bias and stereotyping; and~~

~~[(11)k] [be]are of acceptable technical quality.~~

~~[B-](2)~~ A [P]ublisher[s], when submitting new primary material to be evaluated by the [USOE] Superintendent, shall submit an electronic version of that material in NIMAS file format [of that material] to [the National Instructional Materials Access Center-(NIMAC)] for use in conversion into Braille, large print, and other formats for students with print disabilities.

~~[C- USOE review:]~~

~~[(1)3]~~ The [USOE]Superintendent may require an [school district]LEA to provide a report of instructional materials purchased by the [school district]LEA or a school in the previous five years.

~~[(2)4]~~ The [USOE]Superintendent may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-[8]7. Agreements and Procedures for [School-Districts]LEAs.

~~[A-](1)~~ A local board shall establish a policy for [school district and school-]selection and purchase of instructional materials.

~~[B-](2)~~ As part of any materials adoption process or procurement contract for the purpose of purchasing instructional materials, an LEA shall provide instructional materials to all students, including blind students and other students with disabilities, in a timely manner.

~~[(1)a]~~ A publisher may provide materials in electronic files to NIMAC to make materials available to eligible students.

~~[(2)b]~~ An LEA[s] shall include NIMAS contract language in all contracts with publishers for Core materials.

~~[(3)c]~~ An LEA[s] may purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats for eligible students.

~~[C-](3)~~ An LEA shall require a [The] detailed Core curriculum alignment [shall be required]prior to the purchase of primary instructional materials[by public schools and school-districts purchased for the 2012-2013 school year].

R277-469-[9]8. Qualifications for Core Curriculum Alignment Independent Parties.

~~[Independent parties required to meet mapping and alignment requirements for the 2012-2013 school year shall use reviewer(s)/employee(s) who meet the following minimum requirements:]~~(1) A primary instructional materials provider shall contract with an independent party in accordance with Subsection 53A-14-107(1)(a).

~~(2) An independent party may only employ or contract with a reviewer who has [(1)-have] a degree or an endorsement specific to the subject area of the primary instructional materials. [For example, a reviewer who is aligning an American literature text shall have an English endorsement or degree; a reviewer who is mapping a calculus text shall have a mathematics endorsement or a related mathematics degree. The USOE shall make available to independent parties a list of acceptable endorsements or degrees that shall be current and valid for appropriate review of materials; and~~

~~(2) shall post documentation of credentials and endorsements on a public website designated by the USOE as required under Section 53A-14-107(3)(b).]~~

~~(3) A publisher shall provide proof of an independent party's credentials to the Superintendent upon request.~~

R277-469-[10]9. Detailed Summary Requirements.

~~[Independent parties required to meet mapping and alignment requirements for the 2012-2013 school year shall provide to the publisher a detailed summary of the evaluation. The summary shall:~~

~~----- A. be provided on a public website required under Section 53A-14-107(3)(b) designated by the USOE;]~~

~~(1) An independent party shall submit a summary required under Subsection 53A-14-107(1)(b) in a searchable, software database format designated by the Superintendent.~~

~~[B. submit the summary in the alignment template provided by the USOE;~~

~~----- C. submit the summary in a searchable, software database format designated by the USOE;]~~

~~[D-](2) A summary required under Subsection 53A-14-107(1)(b) shall:~~

~~(a) include detailed alignment information that includes, at a minimum:~~

~~[(1)i] the title of the material;~~

~~[(2)ii] the ISBN number;~~

~~[(3)iii] the publisher's name;~~

~~[(4)iv] the name[f] and grade of the Core document used to align the material;~~

~~[(5)v] the overall percentage of coverage of the Core;~~

~~[(6)vi] the overall percentage of coverage in ancillary resources of the material to the Core;~~

~~[(7)vii] the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;~~

~~[(8)viii] percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard;and~~

~~[(9)ix] objective and indicator in the Core with corresponding page numbers or URLs; and~~

~~[E-](b) provide the detailed alignment information listed in [R277-469-10D(4)]Subsection (a)(iv) for the student text for all editions of the text that are used in Utah public schools;~~

~~[F-](c) provide the detailed alignment information listed in [R277-464-10D(4)]Subsection (a)(iv) for a teacher edition of text, if a teacher edition is used in Utah public schools; and~~

~~[G. designate at the conclusion of the alignment document, the reviewer's evaluation of the material's alignment to the Core curriculum on a scale of 1-10, with 10 indicating the closest alignment to the Utah Core curriculum; and~~

~~----- H-](d) provide an assurance, including a personal [(electronic is adequate)] signature, that the work was completed personally and as required by the licensed and endorsed reviewer.~~

R277-469-1[1]0. Agreements and Procedures for [Publishing-Companies]Publishers.

~~[A-](1) [Beginning with the 2012-2013 school year,publishing companies]A publisher desiring to sell primary instructional materials to Utah school districts [and schools-]shall comply with the requirements of Section 53A-14-107 and this R277-469.[:~~

~~----- (1) contract with an independent party who meets the requirements in R277-469-9 to align and map the primary instructional material and related ancillary materials to the appropriate Utah Core with the following provisions:~~

~~(a) the publisher provides a detailed summary of the Core alignment and mapping as described in R277-469-10 at no charge; and~~

~~(b) the publisher pays the costs associated with the requirements of Section 53A-14-107.~~

~~(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).]~~

~~[B:]~~(2)(a) A [Publishers] publisher seeking to sell recommended materials to Utah schools or school districts shall have [at] 10 books and tangible adopted materials or such other amount as required by a depository based on anticipated need on deposit within the state at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

(b) A publisher shall submit verification of compliance with Subsection (2)(a) to the Superintendent through the publisher's contracted depository prior to the Superintendent posting a review of the materials on RIMs.

~~[C:]~~(3) A publisher may make a [D]depository agreement[s] [may be made between publishers of materials and] with one or more depository.

~~[D:]~~(4) Notwithstanding [F]the provisions of [R277-469-11 shall not preclude publishers from] Subsection (2), a publisher may sell[ing] instructional materials to schools or school districts in Utah directly or through means other than [the] a designated depository.

(5) A publisher need not store [D]digital and online resources [do not require storage in a depository-] within the state, but shall guarantee timely resource availability of a placed order and shall [be-]provide[d] digital and online resource orders without shipping charges.

~~[E- Comparable materials shall be prepared for students with disabilities in a timely manner.~~

~~F. Recommended materials with revisions:]~~

~~(1)~~(6) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the ~~[USOE Instructional Materials Specialist]~~Superintendent for examination purposes; and

(d) the publisher submits a revised electronic edition in NIMAS file format to the ~~[National Instructional Materials Access Center-]~~NIMAC[3] if the ~~[USOE]~~Superintendent approves the substitution request[; and].

~~(2)~~7) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the ~~[state-subject area specialist]~~Superintendent.

~~[G:]~~(8) A publisher's contract price for materials recommended by the Commission and the Board shall apply for five years from the contract date.

R277-469-1[2]1. Request for Reconsideration of Recommendation.

~~[A- A request for reconsideration is an additional opportunity provided to a school district, school or publisher for review of instructional materials when the school district, school or the publisher disagrees with the initial Commission recommendation.~~

~~B. The request for reconsideration procedure is as follows:]~~

(1) The Superintendent shall provide [A] a school district, school or publisher [shall receive]with the evaluations and recommendations resulting from the ~~[USOE of the]~~ initial review of the Commission.

(2) A school district, school or publisher ~~[shall have 30 days to respond to the evaluation and]may, within 30 days of the Commission's initial recommendation, request to have materials reviewed again during the Commission's next review cycle.~~

(3)(a) During the period of the reconsideration request, the Superintendent shall classify materials [shall be marked as tentative and shall not be given official status]only tentatively.

~~(b) [These]The Superintendent shall not post tentatively classified materials [shall not be posted-]to [the Internet site]RIMs until recommended through the official Commission process.~~

(4) A school district, school or publisher may be asked to send a second set of sample materials to the ~~[USOE]~~Superintendent as part of a reconsideration request.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the Commission shall vote on the advisory committee's recommendation ~~[shall be voted on by the Commission-]at the next scheduled meeting.~~

(7) If the Commission votes to change the recommendation, the Superintendent shall notify the Board ~~[shall be notified-]of the action at the next scheduled Board meeting.~~

(8) The Superintendent shall send [A]a school district, school or publisher [shall receive-]written notification of the final recommendation and [shall receive a copy of the] new evaluation. [Evaluations may appear on the Internet if materials are recommended-]

(9) If the Commission and Board approve materials following a request for reconsideration, the Superintendent shall post the evaluation to RIMs.

KEY: instructional materials

Date of Enactment or Last Substantive Amendment: ~~[June 7, 2013]~~2018

Notice of Continuation: November 6, 2017

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-14-101; 53A-14-107; 53A-1-401[3]

Education, Administration **R277-491-4** School Community Council Principal Responsibilities

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 42323
FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A school community council is responsible for approving the school's School Improvement Plan. Some school community council parent members were having difficulty locating a copy of their school's School Improvement Plan. Section R277-491-4 is amended to provide a requirement that the principal of a school post the school's School Improvement Plan on the school website to make it more accessible to parent members of a school community council.

SUMMARY OF THE RULE OR CHANGE: New language is provided in Section R277-491-4 that requires a school principal to provide a copy of or link to the school's current School Improvement Plan on the school's website.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Section R277-491-4 will likely not result in a cost or savings to the state budget. The new language provides for School Improvement Plans to be more easily accessible to parent members of a school community council. This requirement applies to public schools that receive School LAND Trust Program funds.

◆ **LOCAL GOVERNMENTS:** The amendments to Section R277-491-4 will likely not result in a cost or savings to local governments. The new language provides for a school principal to post a copy of or link to the school's current School Improvement Plan on the school's website to make the Plan more easily accessible to school community council parent members.

◆ **SMALL BUSINESSES:** The amendments to Section R277-491-4 will likely not result in a cost or savings to small businesses. The new language provides for School Improvement Plans to be more easily accessible to parent members of a school community council. This requirement applies to public schools that receive School LAND Trust Program funds.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Section R277-491-4 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. A School Improvement Plan that is posted on the school's website will be more easily accessed by a parent member of a school community council.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Section R277-491-4 will likely not result in any compliance costs for affected persons. The new

language provides for information to be more easily accessible.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses. The new language provides for information to be more easily accessible.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

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

R277. Education, Administration.

R277-491. School Community Councils.

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:

- (a) the school community council's election;
- (b) that vacancies were filled by election if necessary;

and

(c) that the school community council's bylaws or procedures comply with Section 53A-1a-108, Rule R277-477, and this rule.

(2) In addition to the requirements of Subsection 53A-1a-108.1(6), each year the principal shall post the following information on the school's website on or before October 20:

(a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds; ~~and~~

(b) the dollar amount the school receives each year from the School LAND Trust Program[-];

(c) a copy of or link to the current School Improvement Plan as required in Section 53A-1a-108.5; and

(d) if the School LAND Trust Plan and School Improvement Plan have been consolidated into one, a statement that the local board has consolidated the two plans into one.

KEY: school community councils

Date of Enactment or Last Substantive Amendment: ~~July 11, 2016~~ **2018**

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1a-108; 53A-1a-108.1

Education, Administration **R277-515** Utah Educator Professional Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42324

FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-515 is amended to clarify educator standards related to alcohol abuse, reviewing of sexually explicit material, treatment of criminal case resolutions, reporting of criminal offenses, and following local education agency (LEA) policies.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide new definitions; remove unnecessary language; update terminology; provide clarifying language regarding an educator's responsibility as a role model, to maintain a safe learning environment; and to comply with LEA policy.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1-401 and Subsection 53A-1-402(1)(a) and Title 53A, Chapter 6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-515 will likely not result in a cost or savings to the state budget. The changes to the rule are to clarify educator professional standards.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-515 will likely not result in a cost or savings to local governments. The amendments to this rule apply to educator professional standards and have no fiscal impact on LEAs.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-515 will likely not result in a cost or savings to small businesses. The amendments to this rule apply to educator professional standards and have no fiscal impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-515 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The amendments provide clarification to existing educator professional standards which educators are subject to.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-515 will likely not result in any compliance costs for affected persons. The amendments provide clarification to existing educator professional standards which educators are, and have been, subject to.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses. The amendments to this rule apply to educator professional standards and have no fiscal impact on businesses.

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

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

R277. Education, Administration.

R277-515. Utah Educator Professional Standards.

R277-515-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board;

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; and

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

(2) The purpose of this rule is to:

(a) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) "Boundary violations" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

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

(b) "Conviction" includes:

(i) a finding of guilty by a judge or jury;

(ii) a guilty or no contest plea; and

(iii) a plea in abeyance.

~~(2)3~~ "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

~~(3)4~~ "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

~~(4)5~~(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

~~(5)6~~ "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

~~(6)7~~ "Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

~~(7)8~~ "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

~~(8)9~~ "License applicant" means a person who is applying for:

(a) an initial license; or

(b) renewal of a license.

~~(9)10~~ "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

~~(10)1~~ "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code

~~(11)2~~ "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

(13) "Pornographic or indecent material" shall have the same meaning as defined in Subsection 76-10-1235(1)(a).

~~(12)4~~ "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

~~(13)5~~ "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

(16)(a) "Under the influence of alcohol or an illegal drug" means that a person:

(i) is under the influence of alcohol, an illegal drug, or the combined influence of alcohol and drugs to a degree that renders the person incapable of effectively working in a public school;

(ii) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater during work hours at a public school.

(b) An educator is presumed to be "under the influence of alcohol or an illegal drug" if the educator refuses a lawful request, made with reasonable suspicion by the educator's LEA, to submit to a drug or alcohol test.

(1[4]Z) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53A-6-301.

(1[5]8) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline in accordance with Rule R277-215.

(4) The professional educator, upon receiving a Utah educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53A-6-405;

(g) may not be convicted of or subject to a diversion agreement [~~specific to~~] for a sex-related or drug-related offense[~~plea in abeyance, court-imposed probation, or court supervision related to a criminal charge that could adversely impact the educator's ability to perform the duties and responsibilities of the profession~~];

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned [~~supervisory~~] employment-related capacity while

possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

(p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses;~~and~~

(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel~~[-]; and~~

(z) shall report an arrest, citation, charge, or conviction to the educator's LEA in accordance with Section R277-516-3.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline in accordance with Rule R277-215.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53A-1-608 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

(C) shall submit and include all required student information and assessments, as required by statute and rule; and

(D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility;~~and~~

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form~~[-];~~

~~(viii) may not knowingly use school equipment to view, create, distribute, or store pornographic or indecent material in any form; and~~

~~(ix) may not knowingly use, view, create, distribute, or store pornographic or indecent material involving children.~~

(3) An LEA shall report violations of Subsection (2) to UPPAC.

(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad

spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

(v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;

(viii) shall use instructional time effectively consistent with LEA policy; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline in accordance with Rule R277-215.

(b) A professional educator:

(i) understands, respects, and does not violate appropriate boundaries:

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

(ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

(3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy, ~~or~~ procedure, or documented directive specific to a rule or policy;

(iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

(iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2) Beginning in the 2018-19 school year, to obtain a license or renew a license issued by the Board, a license applicant shall review this rule and execute a form as part of the licensure or renewal process verifying that the educator:

(a) has read R277-515 and R277-516; and

(b) understands that the educator's conduct is governed by R277-515 and R277-516.

(3) An LEA shall:

(a) annually train educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516; and

(b) provide written assurance of the training described in Subsection (3)(a) in accordance with R277-108.

(4) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

(5) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

(6) Reporting and employment provisions related to professional ethics are provided in:

- (a) Section 53A-15-1507;
- (b) Section 53A-6-501;
- (c) Section 53A-11-403; and
- (d) Section R277-516-7.

KEY: educator, professional, standards

Date of Enactment or Last Substantive Amendments:
[September 21, 2017]2018

Notice of Continuation: November 6, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-6; 53A-1-401

Education, Administration **R277-519** Educator Professional Learning Procedures and Credit

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42325

FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-519 is amended to clarify who has the authority to approve professional learning proposals for the Utah State Board of Education (Board) professional learning credit.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-519 changes the authority for approval of professional learning proposals for awarding Board professional learning credit from an LEA to the Superintendent.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-519 will likely not result in a cost or savings to the state budget. The amendments clarify the authority to approve proposals for Board professional learning credit.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-519 will likely not result in a cost or savings to local governments. The amendments clarify the authority to approve proposals for Board professional learning credit.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-519 will likely not result in a cost or savings to small businesses. The amendments clarify the authority to approve proposals for Board professional learning credit.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-519 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The amendments clarify the authority to approve proposals for Board professional learning credit.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-519 will likely not result in any compliance costs for affected persons. The amendments clarify the authority to approve proposals for Board professional learning credit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses. The amendments clarify the authority to approve proposals for Board professional learning credit.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

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

R277. Education, Administration.

R277-519. Educator Professional Learning Procedures and USBE Credit.

R277-519-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53A-1-402(1)(a), which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators; and

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

(2) The purpose of this rule is to establish definitions and standards for awarding USBE credit for professional learning[~~especially as it relates to teacher certification~~].

R277-519-2. Definitions.

"Professional learning" has the same meaning as provided in Subsection 53A-3-701(1).

R277-519-3. Professional Learning Requirements for Course Submission.

(1) [~~An LEA~~]The Superintendent shall approve proposals for USBE professional learning.

(2) A professional learning proposal described in Subsection (1) shall include:

(a) a description of how the proposal provides fidelity to the professional learning standards as provided in Section 53A-3-701;

(b) a descriptive outline of the professional learning;

(c) a schedule of meeting dates and times; and

(d) professional qualifications of each instructor.

(~~2~~3) An LEA or other organization approved by the Superintendent shall request approval for USBE professional learning credit through the online professional learning system connected to the online Board certification system.

(~~3~~4) An LEA or other organization approved by the Superintendent shall make a request under Subsection (~~2~~3) at least one week prior to the beginning of the scheduled professional learning.

R277-519-4. USBE Professional Learning Credit.

(1) The Superintendent shall award USBE credit upon completion of professional learning as follows:

(a) one-half credit for seven to thirteen contact hours plus a two hour assigned learning task or reflection;

(b) one credit for fourteen to twenty contact hours plus a four hour assigned learning task or reflection;

(2) Total credit for a professional learning course may not exceed 3 credits.

KEY: teacher certification, professional competency

Date of Enactment or Last Substantive Amendment: [~~April 10, 2017~~]2018

Notice of Continuation: February 14, 2017

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

Education, Administration
R277-621
 District of Residence

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 42326

FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-621 is created in response to H.B. 125, Student Residency Amendments, from the 2017 General Session, that requires the Utah State Board of Education to make rules providing procedures for determining when a student qualifies as a resident of an alternative district of residency.

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions; procedures for determination and approval of an alternative district of residency; and procedures for determination and approval of an alternative district of residency for students at human services programs or health care facilities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1-401 and Section 53A-2-201

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The new Rule R277-621 will likely not result in a cost or savings to the state budget. The procedures for determination, approval, and designation as an alternative district of residency apply to local education agencies (LEAs).

◆ **LOCAL GOVERNMENTS:** Enactment of this new rule may result in higher costs for an LEA that receives a qualifying student under provisions outlined in this rule. The costs in the student's former LEA may decrease. The amount of the cost increase or decrease will depend on multiple factors, such as, qualification of state funding, local property tax collections, student program qualification, etc. Costs are very speculative and cannot be determined at this time.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-621 will likely not result in a cost or savings to small businesses. The procedures for determination, approval, and designation as an alternative district of residency apply to LEAs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-621 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The procedures for determination, approval, and designation as an alternative district of residency apply to LEAs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-621 will likely not result in any compliance costs for affected persons. The procedures for determination, approval, and designation as an alternative district of residency apply to LEAs.

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

designation as an alternative district of residency apply to LEAs.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

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

R277. Education, Administration.

R277-621. District of Residence.

R277-621-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53A-2-201, which directs the Board to establish rules for determination of a student's district of residency in accordance with the statute.

(2) The purpose of this rule is to establish the procedure for reviewing a student's request for an alternative district of residency in accordance with Subsections 53A-2-201(2)(b)(iii) and 53A-2-201(2)(b)(iv).

R277-621-2. Definitions.

(1) "Alternative district" or "alternative district of residency" means a district, which may provide educational services, where a student resides:

(a) with a responsible adult, other than a custodial parent or legal guardian; or

(b) in a health care facility or human services program facility.

(2) "Health care facility" means the same as that term is defined in Section 26-21-2.

(3) "Human services program" means the same as that term is defined in Section 62A-2-101.

(4) "Review official" means a district employee designated by the district's superintendent to make an initial

determination on a request for an alternative district of residence in accordance with this rule.

R277-621-3. Determination of Alternative District of Residency.

(1) A student's custodial parent or legal guardian may request a determination that the student's district of residency is a district other than where the student's custodial parent or legal guardian resides by filing a written request with an alternative district.

(a) The Superintendent shall provide a model form for use by a district to accept requests under this rule.

(b) A student request shall outline why the student should receive resident services from an alternative district in accordance with the criteria provided in:

(i) Subsection 53A-2-201(2)(b)(iii); or

(ii) Subsection 53A-2-201(2)(b)(iv).

(2) If an alternative district receives a request under Subsection (1), a district review official shall review the request and make a recommendation to the alternative district's local school board or designee on whether the student should be treated as a resident of the alternative district within ten business days.

(3) The student's custodial parent or legal guardian's district of residence is responsible for the student's education services pending a decision by the local school board or designee of an alternative district in accordance with this R277-621-3.

(4) If the local school board or designee of an alternative district approves a request under Subsection (1), the alternative district shall assume responsibility for providing educational services for the student and enroll the student immediately.

(5) The decision of the alternative district's local school board or designee shall be in writing and set forth the reasons for approving or denying the request in accordance with the statutory criteria.

(6)(a) If the alternative district denies a student request, the student may appeal the decision within ten business days to the Superintendent.

(b) The Superintendent shall rule on a request under Subsection (6)(a) within ten business days.

(7) If a request for an alternative district of residence is approved for a student qualifying for services under the IDEA, the alternative district shall conduct an IEP meeting with representation from the alternative district and the former district of residence under Subsection 53A-2-201(2)(a).

R277-621-4. Students at Human Services Program Facilities.

(1) A student approved for an alternative district of residency while attending a private human services program facility shall be entitled to the educational services of the alternative district at the alternative district's educational facilities designated by the alternative district.

(2) An alternative district of residency is not required to provide educational services on site at a private human services program facility, unless the IEP team of the alternative district determines that on site services are required to meet the needs of a student under federal law.

(3) The alternative district is not responsible for a student's required transportation between a health care facility or human services program facility and the school district's facility.

(4) The alternative district's local school board or designee may periodically reevaluate the non-resident student's eligibility for education services by the alternative district as described in Subsections 53A-2-201(2)(b)(iii) or (iv).

KEY: students, alternative district of residency

Date of Enactment or Last Substantive Amendment: 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-2-201

Education, Administration
R277-920
Implementation of the School
Turnaround and Leadership
Development Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42327

FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-920 is amended in response to S.B. 234, School Turnaround Amendments, passed during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-920 provide funding provisions distributed to a low performing school; criteria for granting an extension to a low performing school; criteria for exiting a school that has demonstrated sufficient improvement; and criteria for approving a teacher recruitment and retention plan.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1-401 and Title 53A, Chapter 1, Part 12

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments to Rule R277-920 will likely not result in a cost or savings to the state budget. New procedures are provided to assist with improvement of low performing schools.

◆ LOCAL GOVERNMENTS: The amendments to Rule R277-920 will likely not result in a cost or savings to local governments. New procedures are provided to assist with improvement of low performing schools.

◆ SMALL BUSINESSES: The amendments to Rule R277-920 will likely not result in a cost or savings to small businesses. New procedures are provided to assist with improvement of low performing schools.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-920 will likely not result in a cost or savings to persons other than small businesses,

businesses, or local government entities. New procedures are provided to assist with improvement of low performing schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-920 will likely not result in any compliance costs for affected persons. New procedures are provided to assist with improvement of low performing schools.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses. New procedures are provided to assist with improvement of low performing schools and apply to Utah public schools.

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

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

R277. Education, Administration.

R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act.

R277-920-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Title 53A, Chapter 1, Part 12, School Turnaround and Leadership Development Act, which requires the Board to make rules to establish:

~~[(i) outcome-based measures to designate a low performing school;]~~

~~(i)~~ an appeal process for the denial of a school turnaround plan;

~~(ii) provisions regarding funding distributed to a low performing school;~~

~~(iii) criteria for granting an extension to a low performing school;~~

~~(iv) criteria for exiting a school that has demonstrated sufficient improvement;~~

~~(v) criteria for approving a teacher recruitment and retention plan;~~

~~(i)(vi) [consequences]implications for a low performing school; and~~

~~(i)(vii) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.~~

~~(2) The purpose of this rule is to:~~

~~(a) enact provisions governing school improvement efforts; and~~

~~(b) implement and administer the School Turnaround and Leadership Development Act.~~

R277-920-2. Definitions.

~~(1) "Appeal committee" means the committee established by Section R277-920-5.~~

~~(2) "Committee" means a school turnaround committee established in accordance with Subsection 53A-1-1204(1) or 53A-1-1205(4).~~

~~(3) "Eligible school" means the same as that term is defined in Section 53A-1-1208.~~

~~(4) "Low performing school" means a school that is:~~

~~(a) for two consecutive school years in the lowest performing:~~

~~(i)a) 3% of the high schools statewide according to the percentage of possible points earned under the school [grading]accountability system; [and]or~~

~~(i)b) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school [grading]accountability system[; and].~~

~~(b) identified by another measure identified by the Board.~~

~~(5) "Plan" means a school turnaround plan described in Subsection 53A-1-1204(3).~~

~~(5) "High performing charter school" means the same as that term is defined in Section 53A-1-1207.~~

~~(6) "Local education board" means a local school board or charter school governing board.~~

~~(6) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).~~

~~(8) "Schools in critical needs status" means a school that has been identified under Subsection R277-920-3(1).~~

~~(7) "School leader" means the same as that term is defined in Section 53A-1-1209.~~

~~(8) "School turnaround program" means the school turnaround program described in:~~

~~(a) Sections 53A-1-1203 through 53A-1-1207; and~~

~~(b) Sections R277-920-3 through R277-920-7.~~

~~(10) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.~~

R277-920-3. Superintendent's [Designation of Low-Performing Schools and Waiver Authority]Identification of Schools for Critical Needs Status -- Readiness Review.

~~(1) The Superintendent may issue a waiver and exclude a low performing school from participating in the school turnaround program if:~~

~~(a) the low performing school:~~

~~(i) has been designated a priority school by the Superintendent;~~

~~(ii) received school improvement grant money for the school year immediately following the school year for which the school is being graded; and~~

~~(iii) is already working with a turnaround expert through the school improvement grant; or~~

~~(b) the low performing school is in the school's first three years of operation.~~

~~(2) If the Superintendent excludes a low performing school from the school turnaround program as described in Subsection (1), the Superintendent shall designate additional schools, outside of the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school grading system, until the school turnaround program includes at least 3% of the total public schools statewide.~~

~~(3) When selecting an additional school described in Subsection (2), the Superintendent shall include the next lowest performing schools according to the percentage of possible points earned under the school grading system. (1) Subject to Subsection (2), on or before September 30, the Superintendent shall identify schools for critical needs status if the school is a:~~

~~(a) low performing school;~~

~~(b) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for two consecutive school years;~~

~~(c) Title I school with chronically underperforming student groups as described in Section R277-920-11; or~~

~~(d) Title I school that:~~

~~(i) has not been identified under Subsection (1)(a), (b), or (c); and~~

~~(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.~~

~~(2) The Superintendent shall make the identification under:~~

~~(a) Subsection (1)(b) beginning with the 2018-2019 school accountability results and every two years thereafter;~~

~~(b) Subsection (1)(c) beginning with the 2022-2023 school accountability results and every three years thereafter; and~~

~~(c) Subsection (1)(d) beginning with the 2021-2022 school accountability results and every three years thereafter.~~

~~(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with the provisions of Title 53A, Chapter 1, Part 12, School Turnaround and Leadership Development Act.~~

~~(b) Schools that are identified under Subsections (1)(b), (1)(c), and (1)(d) are exempt from the requirement to contract with an independent school turnaround expert described in Section 53A-1-1206.~~

R277-920-4. School Turnaround Plan Submission and Approval Process.

(1) In addition to the requirements described in Subsection 53A-1-1204~~(3)5~~, a plan shall include at least the following:

~~_____ (a) a requirement that the school leaders of the low performing school participate in the School Leadership Development Program described in Section 53A-1-1209 and Section R277-920-8;~~

~~_____ (b) a thorough analysis of the root cause of the low performing school's low performance;~~

~~_____ (c) a specific and detailed plan to address the root cause of the low performing school's low performance;~~

~~_____ (d)a~~ if the ~~[low performing]~~ school in critical needs status is a district school, a request ~~[from]~~to the local school board ~~[or]~~and district superintendent for:

(i) additional resources;

(ii) personnel; or

(iii) exemptions from district policy that may be contributing to the low performance of the district school; and

~~(e)b~~ a plan for management of school personnel, including:

(i) recruitment of an educator or school leader; and

(ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(2)3(a) A local ~~[school board or charter school governing]~~education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local ~~[school board or charter school governing]~~education board shall give a reason for a denial of each part of a plan.

(4) On or before January 15, a local education board of a low performing school shall submit a proposal described in Subsection 53A-1-1204(1) or Subsection 53A-1-1205(4) to the Superintendent for approval.

(3)5 A local ~~[school board or charter school governing]~~education board shall submit a plan in accordance with Subsection 53A-1-1204~~(5)(b)~~(7) or Subsection 53A-1-1205~~(7)(b)~~(9) to the ~~[Superintendent]~~Board.

(4)6)(a) In accordance with Subsection 53A-1-1206~~(4)3~~, the ~~[Superintendent shall]~~Board may review and approve or deny a plan in whole or in part, if the part of the plan the ~~[Superintendent]~~Board denies is severable from the part of the plan the ~~[Superintendent]~~Board approves.

~~(b) The Superintendent shall give a reason for a denial of each part of a plan.~~

R277-920-5. Funding.

(1) The Superintendent shall annually designate an amount of funds available for distribution under this section, taking into consideration:

(a) variability in the number of schools that are identified on an annual basis;

(b) encumbered funds; and

(c) other program obligations.

(2) Subject to availability of funds, on or before January 30 of the school year in which a low performing school is identified, the Superintendent shall distribute at least \$240,000 per low performing school to each local education board of a low performing school.

(3) Subject to availability of funds, in addition to the amount distributed under Subsection (2), the Superintendent shall distribute an amount equal to \$30,000 for each of the following criteria that a school meets:

(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;

(b) the school is located within San Juan County; or

(c) the school:

(i)(A) has over 75 full time equivalent educators; and

(B) includes grade 12; or

(ii)(A) has over 37 full time equivalent educators; and

(B) does not include grade 12.

(4) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (2) and (3) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53A-1-1203, into account.

(5)(a) The local education board shall use the funding distributed under this section to contract with an independent school turnaround expert, including travel costs, in accordance with Sections 53A-1-1204 and 53A-1-1205.

(b) A local education board shall use funding available after the allocation of funds under Subsection (5)(a) only for interventions identified in a school turnaround plan.

(6) The Superintendent may review uses of funds and contracts with independent school turnaround experts.

R277-920-6. Teacher Recruitment and Retention.

(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-5.

(2) In accordance with Section 53A-1-1208.1, a local education board of a low performing school may seek and receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).

(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:

(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;

(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53A-1-1203; or

(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:

(A) a clear definition of the problem to be solved;

(B) hypotheses for the causes of the problem;

(C) strategies to address the root causes of the problem;

(D) current data on teacher retention rates; and

(E) current recruitment and retention strategies;

_____ (c) includes the amount of matching funds the local education board is requesting from the state;

_____ (d) includes assurances that the local education board will allocate matching funds; and

_____ (e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.

_____ (4) The Superintendent shall:

_____ (a) approve a plan that meets the criteria described in Subsection (3); and

_____ (b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:

_____ (i) \$1000 per teacher for schools identified based on 2014-2015 school accountability results; or

_____ (ii) \$1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.

R277-920-[5]7. Appeal Process for Denial of a School Turnaround Plan.

(1) As used in this section "plan" means a school turnaround plan described in Subsection 53A-1-1204(5).

([1]2) A committee~~[- local school board, or charter school governing]~~ or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

([2]3) An appeal authorized by this rule:

(a) is an informal adjudicative proceeding under Section 63G-4-203; and

(b) shall be resolved by the date specified in Subsection 53A-1-1206([5]6)(b).

([3]4)(a) A principal, on behalf of a committee, may request that the local ~~[school board or the charter school governing]~~ education board reconsider the denial of a plan:

(i) by electronically filing the request:

(A) with the chair of the local ~~[school board or the charter school governing]~~ education board; and

(B) on a form provided on the [USOE]Board website; and

(ii) within 5 calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local ~~[school board or the charter school governing]~~ education board shall respond to the request within 10 calendar days by:

(i) refusing to reconsider its action;

(ii) approving a plan, in whole or in part; or

(iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the [USOE]Board website; and

(ii) within 5 calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (5) and (6).

([4]5) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf

of a charter school governing board, may appeal the [Superintendent's]Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the [USOE]Board website; and

(b) within 5 calendar days of the denial.

([5]6)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

(c) The appeal committee shall make a written recommendation within 5 business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

([6]7) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

R277-920-8. Exit Criteria for a School in Critical Needs Status -- Extensions -- More Rigorous Interventions.

(1)(a) Except as provided in Subsection (1)(b), to exit critical needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified:

(i) for the second and third years, consecutively, after which the school was identified for critical needs status; or

(ii) for two consecutive years by the end of the extension period described in Subsection (3).

(b) A school that was identified based on 2014-15 school accountability results is required to improve performance by at least one letter grade, as determined by comparing the school's letter grade for the 2014-15 school year to the school's letter grade for the 2017-18 school year.

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53A, Chapter 1, Part 11, School Accountability System that was in place at the time the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1)(a), the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i) has cut the difference by 50% between:

(A) the percentage of points earned in the school year in which the school was identified; and

(B) the percentage of points necessary to meet the exit criteria described in Subsection (1)(a); or

(ii) has met the exit criteria described in Subsection (1)(a) for only one year; and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

(4)(a) The Superintendent shall conduct an in-depth analysis of the alignment of the school's curriculum to the Utah core standards:

(i) in each school that qualifies for an extension under Subsection (3); and
(ii) that is individualized to each teacher.
(b) The Superintendent may require a local education board or school to:
(i) take actions to remedy issues identified in the analysis described in Subsection (4)(a); or
(ii) revise the school turnaround plan.
(5) If a school identified for critical needs status does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:
(a) a state review panel, described in Subsection (7);
(b) if the school is a district school, the local school board, with input from the community as described in Subsection (8); and
(c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection (8).
(6) The groups described in Subsection (5) shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:
(a) require personnel changes, including replacement of school leaders or teachers;
(b) if the school is a district school:
(i) require involuntary transfers of school leaders or teachers;
(ii) require the local school board to change school boundaries;
(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or
(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;
(c) if the school is a charter school:
(i) require that the charter school governing board be replaced; or
(ii) require that the charter school authorizer close the school; or
(c) if the school is a charter school, require that the charter school authorizer:
(i) replace some or all members of the charter school governing board;
(ii) transfer operation and control of the charter school to:
(A) a high performing charter school; or
(B) the school district in which the charter school is located; or
(iii) close the school; or
(d) take other action.
(7)(a) The Superintendent shall appoint members of the state review panel subject to Subsection (7)(b).
(b) The state review panel shall include at least three members who each have demonstrated expertise in two or more of the following fields:
(i) leadership at the school district or school level;
(ii) standards-based elementary or secondary curriculum instruction and assessment;

(iii) instructional data management and analysis;
(iv) educational program evaluation;
(v) educational program management;
(vi) teacher leadership;
(vii) change management;
(viii) organizational management; or
(ix) school budgeting and finance.
(c) The state review panel shall critically evaluate at least:
(i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;
(ii) whether the school leadership is adequate to implement change to improve school performance;
(iii) whether the school has sufficient authority to implement change;
(iv) whether the plan is being implemented with fidelity;
(v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53A-1-1204;
(vi) the likelihood that performance can be improved within the current management structure and staffing; and
(vii) the necessity that the school remain in operation to serve students.
(8) A local school board and charter school authorizer shall develop recommendations under this section in collaboration with:
(a) parents of students currently attending the school;
(b) teachers, principals, and other school leaders at the school;
(c) stakeholders representing the interests of students with disabilities, English learners, and other vulnerable student populations; and
(d) other community members and community partners.

[R277-920-6. Consequences for a Low Performing School:

~~(1) The Board may impose a consequence described in this section if a low performing school does not improve the school's grade one letter grade or better within the time described in Subsection 53A-1-1207(3).~~
~~(2) The Board may restructure a low performing district school by taking over the low performing district school, or by other means as the Board deems appropriate.~~
~~(3) The Board may restructure a low performing charter school by taking over the low performing charter school, or by:~~
~~(a) closing the low performing charter school; or~~
~~(b) other means as the Board deems appropriate.~~

R277-920-7. Hearing and Procedure Requirements Related to the Board's Imposition of a Consequences for Low Performing Schools:

~~On or before December 1, 2016, the Superintendent shall make recommendations to the Board for changes to this rule regarding hearing and procedure requirements related to the Board's imposition of a consequence as described in Section R277-920-6.~~
~~]~~

R277-920-[8]9. School Leadership Development Program.

(1) A school leader ~~[other than a school leader from a low performing school]~~ may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a ~~[priority school as designated by the Superintendent]~~ school in critical needs status; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the ~~[USOE]~~ Board website by the date specified on the ~~[USOE]~~ Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) ~~[f]~~ First priority ~~[is]~~ shall be given to a school leader who is assigned to a low performing school;

(ii) second priority is given to a school leader who is assigned to a ~~[priority school as designated by Superintendent]~~ school in critical needs status that is not a low performing school; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

~~[(4)(a) In consultation with the Superintendent and the local school board chair, the district superintendent of a low performing school shall select a district administrator to participate in the School Leadership Development Program to:~~

~~(i) support the school leader participating in the School Leadership Development Program; and~~

~~(ii) assist the school district's local school board to fulfill the requirements of Subsection 53A-1-1204(4).~~

~~(b) In consultation with the Superintendent and the governing board chair, the charter director of a low performing school shall select a charter administrator to participate in the School Leadership Development Program to support the school leader participating in the School Leadership Development Program.]~~

~~[(5)4(a) In accordance with Subsection 53A-1-1209(4), the Superintendent shall award incentive pay to a school leader within 30 days after the school leader:~~

~~(i) completes the School Leadership Development Program; and~~

~~(ii) submits a written agreement to the Superintendent to work as described in Subsection 53A-1-1209(4).~~

~~(b) The Superintendent shall evenly divide the appropriation among the school leaders who meet the requirements of this Subsection [(5)4].~~

~~[(6)5] The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.~~

R277-920-[9]10. School Recognition and Reward Program.

(1) The Superintendent shall distribute school recognition and reward program money to the principal of an eligible school:

(a) in accordance with Section 53A-1-1208; and

(b) within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.

(2) The Superintendent shall notify the principal of an eligible school within 15 days of the Board's official release of school grades:

(a) that the eligible school is eligible for an award of money pursuant to Section 53A-1-1208; and

(b) of the amount of the award that the eligible school will receive.

(3) In accordance with Section 53A-1-1208, the principal shall distribute the money received under Subsection (1):

(a) to each educator assigned to the school for all of the years the school ~~[participated in the school turnaround program]~~ was identified as a low performing school; and

(b) in a pro-rated manner to each educator assigned to the school for less time than the school ~~[participated in the school turnaround program]~~ was identified as a low performing school.

R277-920-11. Superintendent's Identification of Schools for Targeted Needs Status.

(1) As used in this section, "student groups" means a group of 10 or more students:

(a) who are economically disadvantaged;

(b) with disabilities;

(c) who are English learners;

(d) who are African American;

(e) who are American Indian;

(f) who are Asian;

(g) who are Hispanic;

(h) who are Multiple races;

(i) who are Pacific Islander; or

(j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of points in the state's accountability system that is equal to or below the percentage of points associated with the lowest rating in the state's accountability system; and

(ii) is not currently identified for critical needs status under Section R277-920-3.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-3.

KEY: school improvements, principals, school leaders
Date of Enactment of Last Substantive Amendment: [February 8, 2016]2018
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-12

Governor, Economic Development
R357-16
Utah Outdoor Recreation Infrastructure Grant

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 42332
 FILED: 11/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change makes updates to the rule to bring it into compliance with S.B. 264 passed during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: These changes delete provisions related to the youth program grant because that portion of the grant program was repealed by S.B. 264 (2017), and make corresponding technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63N-9-203

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no cost or savings to the state budget because this rule only makes changes in response to the updates made to the program by S.B. 264 (2017).
- ◆ **LOCAL GOVERNMENTS:** There is no cost or savings to local governments because this rule change does not impose any new requirements or regulations on local governments. This rule change does update the rule to delete the criteria for the youth grant program to bring it in accordance with the changes created in S.B. 264 (2017). There will be an impact to any local government that was planning to apply for the youth program grant. However, only 16 grants were awarded under this program and none were awarded to a local government entity.
- ◆ **SMALL BUSINESSES:** There is no fiscal impact to small businesses because this rule change does not impose any new requirements or regulations on small businesses. This rule change does update the rule to delete the criteria for the youth grant program to bring it in accordance with the changes created in S.B. 264 (2017). There will be an impact to any small business that was planning to apply for the youth program grant. However, only 16 grants were awarded under this program to small businesses including non-profits with less than 25 total applicants for the youth grant. This is less

than 1% of total small businesses including non-profits that could apply for eligible youth programs under the program. Therefore, the fiscal impact to small businesses is deemed to be negligible or non-existent.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to other persons because this rule change does not impose any new requirements or regulations on any other group or persons. This rule change does update the rule to delete the criteria for the youth grant program to bring it in accordance with the changes created in S.B. 264 (2017). There will be an impact to any other group or person that was planning to apply for the youth program grant. However, only 16 grants were awarded under this program and none were awarded to any other group or persons outside of small businesses including non-profits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance cost for any affected persons because this rule simply repeals any criteria related to the youth program which was repealed by S.B. 264 (2017).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs for small businesses because this rule simply repeals any criteria related to the youth program which was repealed by S.B. 264 (2017).

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.
R357-16. Utah Outdoor Recreation Infrastructure Grant.
R357-16-1. Authority.

(1) Subsection 63N-9-203 requires the office to make rules establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant.

R357-16-2. Definitions.

(1) Terms in these rules are defined in Utah Code Section 63N-9-102.

R357-16-3. Application Form and Submission Procedure.

(1) The application will be provided by the Office and contain the following content:

- (a) General submission instructions;
 - (b) Grants available to be claimed [~~including tiered amounts~~];
 - (c) Criteria for qualification of a grant;
 - (d) Instructions regarding a project description including timeline;
 - (e) Instructions for providing an outlined budget for total project cost, highlight of funds already procured for the project; and an itemized budget showing planned use of the grant funds being requested;
 - (f) Instructions for reporting project impacts including community and economic impacts;
 - (g) The application scoring system [~~and grant tiers~~];
 - (h) Any required deadlines, reports, and relevant timelines;
- and

- (i) All required documents and information necessary for verification and approval of the application.
- (2) The application shall be created in an electronic form available to the public at business.utah.gov
- (3) The application shall also be available in paper form for any person or entity that requests it.
- (4) Applications must be submitted to Office of Outdoor Recreation staff on or before the specified deadline in the application.
- (5) Staff will review final applications for completeness and the [~~director~~] program manager of the Office of Outdoor Recreation will verify that the documentation is complete and that it meets the program criteria as outlined in statute and this rule.
- (6) All completed documentations will be reviewed and awardees selected via the criteria and method as outlined in [~~R357-16-5 and R357-16-6~~] in this rule.

R357-16-4. Eligible Entities.

- (1) Grants may be awarded to the following entities within the state of Utah:
- (a) Non-profit corporations physically located within the State with a 501(c)(3) status;
 - (b) Municipalities;
 - (c) Counties; and
 - (d) Tribal governments.
- (2) The following entities may not receive an infrastructure grant:
- (a) a federal government entity;
 - (b) a state agency; and
 - (c) a for-profit entity.

R357-16-5. Infrastructure Project Eligibility Criteria.

- (1) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed project's eligible costs. [~~A minimum of 25% of the total project costs must be a cash match from the applicant and/or partners.~~] The grant recipient shall provide matching funds having a value equal to or greater than the amount of the infrastructure grant.
- (a) The maximum grant request is dependent on available funds and will be outlined in the grant application.
 - (b) Up to 50% of the grant recipient match may be provided through an in-kind contribution by the grant recipient, if:

(i) approved by the executive director after consultation with the director and the board; and

(ii) the in-kind donation does not include real property.

(c) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(e) At least 75% of the matching funds for the project must be secured in order to apply.

(2) Economic Development or Tourism Endorsement: The infrastructure project shall have an endorsement from the local economic development office and/or local tourism director stating that the project will have the ability to attract growth and retention in the community/area and/or have the potential for increased visitation to the area. [~~County~~] Endorsement: The infrastructure project [must have county approval and] endorsement should be provided in writing at the time of application.

(a) Statement of Responsibility: [An agreement signed with the county appointing a party] The applicant must include a Statement of Responsibility from the entity who will maintain the recreational infrastructure in the future. This will [may] be required by the Office as a condition to receiving a grant.

(3) Public Lands: If the project is located on public lands, it must have approval from the appropriate public entity.

(a) The applicant may be required to show approval from the agency that follows the National Environmental Policy Act (NEPA) process as a condition to receiving the grant.

(4) Property Ownership: All projects must be located on land that is owned by or under the control of the applicant or a partner (e.g. local government or conservancy.)

(a) If the project crosses private property, as in the case of a trail, a [~~n~~] binding agreement must be reached with the property owners for a minimum of 10 years.

~~[(5) Economic Development Endorsement: The infrastructure project must have an endorsement from the local economic development office stating that the project will have the ability to attract growth and retention in the community/area and/or have the potential for increased visitation to the area.~~

~~[(6) Sensitive Wildlife Areas: Applicant must coordinate with the Utah Division of Wildlife Resources (DWR) to determine if the project is located in a special management area for sensitive species such as the greater sage grouse.~~

(a) If the project is in or near a Sage Grouse Management Area (SGMA), the project proponent shall coordinate with DWR to make reasonable accommodations to avoid, minimize or mitigate the impacts to greater sage-grouse and their habitats.

[(7) Eligible] Infrastructure projects may include but are not limited to:

(a) [New] The establishment, construction, or renovation of trails, trail facilities, and trail infrastructure (e.g. trail kiosk, trail wayfinding signage, trailhead parking, restroom facilities, bridge or tunnel);

(b) The construction of a project for water-related outdoor recreational activities [Restroom facilities near popular recreation areas];

(c) The development of a project for wildlife watching opportunities, including bird watching [Trail facilities (e.g. trail or way finding signage, trailhead parking, kiosks, etc.)];

(d) The development of a project that provides winter recreation amenities [Ramp/launch site to improve water access areas]

along rivers for non-motorized boats (e.g. a proposed National Water trail system);

(e) ~~the construction or improvement of a community park that has amenities for outdoor recreation~~[Infrastructure for wildlife-viewing areas];

(f) ~~The construction or improvement of a naturalistic and accessible playground~~[Whitewater parks];

(g) ~~the construction of a community owned or sponsored campground~~[Outdoor amphitheaters]; or

(h) ~~The establishment or construction of a community owned outdoor shooting or archery range~~[Yurts].

(8) Ineligible Infrastructure projects may include but are not limited to:

(a) A private business such as outdoor service concession, amusement park, [ice skating rink,] tubing park, etc.;

(b) Outdoor education programming;

(c) Outdoor swimming pools;

(d) Golf Courses;[-or]

(e) Athletic fields or courts[-];

(f) Outdoor amphitheaters;

(g) General community wayfinding signage; or

(h) Harbor dredging projects.

~~[R357-16-6. Outdoor Recreation Youth Program Grants Eligibility Criteria.~~

~~(1) The Office may award grants for outdoor recreation youth programs.~~

~~(2) The program must provide outdoor recreation activities for youth 18 years old or younger and include physical activities that have an element of fitness.~~

~~(3) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed program's eligible costs. A minimum of 25% of the total project costs must be a cash match from the applicant and/or partners.~~

~~(a) The maximum grant request is dependent on available funds and will be outlined in the grant application.~~

~~(b) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.~~

~~(c) At least 75% of the matching funds for the program must be secured in order to apply.~~

~~(d) Staff salaries may only allowed as matching costs as outlined in the application.~~

~~(4) Applicant must demonstrate that the program increases participation in outdoor recreation among young people.~~

~~(5) The program must have clear and measurable outcomes including an action plan with clear measures to evaluate success.~~

~~(6) Applicant must outline in the application a budget of how the grant would be utilized for the program.~~

~~(7) All other found in Utah Code 63N-9, R357-16-3, and R357-16-5(3) (8) apply to the outdoor recreation youth program grants.]~~

~~R357-16-7. Method and Formula for Determining Grant Recipients~~[Amounts].

~~(1) The Office shall use a weighted scoring system to enable the Utah Outdoor Recreation Grant Advisory Committee (pursuant to 63N-9-204) to analyze and [award]advise on the awarding of grant and grant amounts.~~

(a) The scoring system shall be made available in the application;

(b) The scoring system will assess and value general categories including:

i. Community need;

ii. Economic impact including the potential to increase area tourism;

iii. Recreation access and value;

iv. Project readiness; and

v. [Improved physical and recreational access; and]

vi. Location within an underserved population or area.

~~(2) The Office shall distribute the grant applications among the committee members and ensure that each application will be reviewed and scored by members of the advisory committee.~~

~~(3) The Office will use the average of the scores to create a prioritization matrix ranking the applications in ascending order.~~

~~[The Office will give grant awards in a tiered manner with a certain number of grants available at each tier level utilizing the prioritization matrix.~~

~~(a) The Office will provide the tiered amounts and the available number of grants in each tier level in the application.~~

~~(b) The Office may collapse tier levels if there are no applicants that score within that tier level and there is an oversubscription in other tier levels.](4) Committee Review Procedure~~

~~(a) The Office shall convene the advisory committee for a meeting for the purpose of selecting the projects which will be recommended for the review~~

~~i. Method and formula for determining grant awards in committee meeting:~~

~~A. A prioritization matrix will be utilized to rank the projects~~

~~B. All but the lowest ranked projects will receive a review during the meeting of the committee~~

~~1. Subject to procedural rules, a member and a second may request a vote to bring a low scored project that was not scheduled for review to receive consideration by the committee~~

~~2. Subject to procedural rules, a member and a second may request a full committee vote for recommendation of an award~~

~~ii. Prioritization may be given to projects that:~~

~~A. Conform to the criteria and eligibility as set forth in the program guide; and~~

~~B. can increase visitation; or~~

~~C. will serve an underprivileged or underserved community; or~~

~~D. will provide geographic parity; or~~

~~E. are trails that are "family friendly"or~~

~~F. are trail segments that complete trail gap; or~~

~~G. will add to connect trails for a larger trail network; or~~

~~H. enhance an outdoor recreation amenity that draws tourists; and~~

~~I. have coordinated with the local tourism office to market the project as a tourism attraction.~~

~~(b) Rules for scoring during Grant scoring meeting~~

~~i. No committee member shall vote on a project in which he/she has substantial interest and shall leave the room while the project is being reviewed and voted on.~~

~~ii. To aid in the meeting evaluation, a synopsis of each of the projects will be provided and each reviewer will have access to all scored evaluations~~

(c) In accordance with available funds, the committee will give proposals for funding

(d) The recommendations for grant awards will be forwarded to the executive director who will consult with the director and the Governor's Office of Economic Development board and give final approval.

(e) In the event an awardee's project no long qualifies for the grant, the grant award may be awarded to the highest scored project of the denied applicants.

(f) The office will notify applicants of the funding decision within two weeks of the final decision

i. Winning applicants will be notified of expected contractual requirements

ii. The grant applicants who were unsuccessful in winning a grant award will be notified of the rejection.

A. A copy of the reviewers written comments with redacted names shall be provided to rejected applicants upon request.

R357-16-8. Reporting and Cooperation Requirements.

(1) Grant recipient will cooperate with reasonable requests for site visits during and after completion of the Project.

(2) Grant recipient will provide any additional financial records related to the grant project upon the Office's request. Grant recipient will give a progress report twice yearly until project is completed.

(3) Grant recipient will provide economic development information and supporting documentation of economic development goals achieved at minimum on an annual basis or upon the Office's request.

(a) Such information shall be provided for up to ~~[five]~~10 years following completion of the Project.

(4) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent.

(5) Grant recipient shall provide the Office with a final written itemized report when the entire grant is spent.

(6) The reports referenced in (4) and (5) shall be provided at least annually, and no later than 60 days after the grant agreement has expired.

(a) Each report shall include:

i. an accounting of project expenditures; and

ii. assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as describe in the recipient's grant application and grant agreement.

R357-16-9. Appeal of Application Denial.

(1) A denial of an applicant's request for a grant may be appealed by written request pursuant to Utah Code Section 63G-4-201, and in accordance with this rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its denial of grant.

(3) Failure to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must mail or email a scanned copy of the form to the address or email address contained on the denial.

(4) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark

date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through convincing evidence that it was mailed before the date of receipt.

(5) The Office shall hold informal adjudicative proceedings in accordance with Utah Code Sections 63G-4-202 and 203. The Office shall notify the petitioner and Office representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be for good cause shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The Petitioner named in the notice of agency action and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

(a) Testimony may be taken under oath.

(b) All hearings are open to all parties.

(c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(d) A respondent shall have access to relevant information contained in the Office's files and to material gathered in the investigation of respondent to the extent permitted by law.

(e) The Office may cause an official record of the hearing to be made, at the Office's expense.

(7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Office shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Subsection 63G-4-203(i).

KEY: Outdoor Recreation Infrastructure Grant, outdoor recreation, grants

Date of Enactment or Last Substantive Amendment: ~~July 15, 2016~~2018

Authorizing, and Implemented or Interpreted Law: 63N-9-203

Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health **R388-805** Ryan White Part B Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42328

FILED: 11/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove the asset test, to restrict case management services to clients at or below 500% of the federal poverty level (FPL) limit to align eligibility requirements with HRSA guidelines, and to reduce barriers to accessing care.

SUMMARY OF THE RULE OR CHANGE: The changes remove eligibility asset limit of owning no more than one home and one car, and implement a 500% FPL limit for case management services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-15 and Section 26-1-18 and Section 26-1-5 and Subsection 26-1-30(2)(a) and Subsection 26-1-30(2)(b) and Subsection 26-1-30(2)(c) and Subsection 26-1-30(2)(g)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are minimal anticipated savings to the Ryan White Part P Program (Program) by implementing a 500% FPL limit for case management services. It is difficult to predict exact savings based on client enrollment, however, it is anticipated that this change will save the Program approximately \$1,500 annually. This is a federally-funded program that provides services to people living with HIV/AIDS. The majority of the population served (60%) has no assets. Removing the asset test is not anticipated to increase Program utilization but rather reduce barriers to accessing care and determining eligibility.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments because the program governed by this rule neither requires action from nor provides benefits to local governments.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the program governed by this rule neither requires action from nor provides benefits to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes will affect individuals that are over the 500% FPL and clients that own more than one car or home. It is anticipated that there will be no significant impact to the budget as the majority of individuals enrolled in the Program do not own more than one car or home and implementing the 500% FPL limit will restrict enrollment in case management services. In the last 12 months, only 9 clients were over 500% FPL. Clients who are no longer eligible for case management services through the Part B Program will still receive services free of cost, however, their services will no longer be eligible for reimbursement through the Program. These costs will be absorbed by the case management agency at an anticipated annual cost of \$1,500.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as the Program incurs all costs associated with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments remove the asset test, restrict case management services to clients at or below 500% FPL limit to align eligibility requirements with HRSA guidelines, and reduce barriers to access care. It is anticipated that these changes will result in a lost of approximately \$1,500 to non-small businesses currently contracted with the

Department of Health including the University of Utah Clinic 1A and the Utah Aids Foundation. The amendments will have a slight negative fiscal impact on non-small business providers who contract with the Department through a loss of some funding due to eligibility requirements for clients in this program.

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

HEALTH
DISEASE CONTROL AND PREVENTION;
HIV/AIDS, TUBERCULOSIS CONTROL/
REFUGEE HEALTH
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:

◆ Amelia Self by phone at 801-538-6221, by FAX at 801-538-9913, or by Internet E-mail at aself@utah.gov or mail at PO Box 142105, Salt Lake City, UT, 84114-2105

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

	FY 2018	FY 2019	FY 2020
Fiscal Costs			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$1,500	\$1,500	\$1,500
Other Persons	\$0	\$0	\$0
Total Fiscal Costs:	\$1,500	\$1,500	\$1,500

Fiscal Benefits

State Government	\$1,500	\$1,500	\$1,500
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Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$1,500	\$1,500	\$1,500
Net Fiscal Benefits:	\$0	\$0	\$0

The total fiscal costs is the sum of all the fiscal costs.

The total fiscal benefits is the sum of all the fiscal benefits.

The net fiscal benefits is total fiscal benefits minus total fiscal costs.

Fiscal costs to non-small businesses include the loss of Program funded case management services to clients exceeding the 500% Federal Poverty Limit, which is an estimated \$1,500 annually. The agencies currently contracted with UDOH include University of Utah, Clinic 1A and the Utah AIDS Foundation.

R388. Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health.

R388-805. Ryan White Part B Program.

R388-805-1. Authority and Purpose.

This rule governs program eligibility, benefits, and administration by the Department for the Ryan White HIV/AIDS Treatment Extension Act of 2009 Part B Program (Ryan White Part B Program). It is authorized by Section 26-1-5; Section 26-1-15; Section 26-1-18; and Section 26-1-30(2)(a), (b), (c), and (g).

R388-805-2. Definitions.

The following definitions apply to this rule:

- (1) "HIV" means Human Immunodeficiency Virus.
- (2) "Department" means the Utah Department of Health.
- (3) "Client" means an individual who meets the eligibility

criteria and is enrolled in the Ryan White Part B Program pursuant to the provisions of this rule.

R388-805-3. Nature of Program and Benefits.

(1) The Ryan White Part B Program provides reimbursement to providers for services rendered to HIV positive individuals who meet the eligibility requirements. The Ryan White Part B Program provides limited services as described in this rule. The Department provides reimbursement coverage under the program only for services for each program:

- (a) as provided in law governing the Ryan White HIV/AIDS Treatment Extension Act of 2009;
- (b) to the extent that it has agreed to reimburse providers with whom it contracts to provide services; and

- (c) as limited in its agreements or contracts with providers.
- (2) Within available funding, the Department provides Core Medical and Supportive Services as allowable under the legislation;
 - (a) The AIDS Drug Assistance Program (ADAP) provides HIV related medications, health insurance premium, and cost-sharing assistance.
 - (b) Supportive Services Program provides a variety of supportive services that enable the client to access medical care as well as to retain the client in medical care.
 - (3) The Department may adjust the services available to meet current needs and fluctuations in available funding.
 - (4) The Ryan White Part B Program is not health insurance. A relationship with the Department as the insurer and the client as the insured is not created under this program.

R388-805-4. Providers.

The Department reimburses only providers who contract with the Department to provide services under the program.

R388-805-5. Reimbursement.

- (1) The Department shall reimburse only for services as limited in its agreements or contracts with providers.
- (2) The Department shall reimburse providers according to the fee schedule or budgets that are made part of its agreements or contracts with providers.
- (3) The Ryan White Part B Program is the payer of last resort. The Department does not pay for services under the Ryan White Part B Program for which an individual is eligible to receive under any other primary payer source.

R388-805-6. Ryan White Part B Program Eligibility.

- (1) To receive services under the Ryan White Part B Program, an individual must physically reside in Utah, and must have a medical diagnosis of HIV infection as verified by the individual's physician. [~~and may not own more than one home and one registered vehicle.~~]
- (2) To receive Core Medical and Supportive Services, excluding Case Management services, an individual must not have gross annual household income exceeding 250% of the federal poverty level.
- (3) To receive Case Management services, an individual must not have gross annual household income exceeding 500% of the federal poverty level.
- [~~(3)~~](4) To be eligible to receive assistance from the AIDS Drug Assistance Program, including health insurance premium and cost-sharing assistance an individual must have a prescription for the medication requested.
- [~~(4)~~](5) Clients must re-certify semi-annually in order to continue program participation.

KEY: treatment and care, HIV/AIDS, ADAP, Ryan White Part B Program

Date of Enactment or Last Substantive Amendment: [~~November 30, 2016~~]**2018**

Notice of Continuation: **September 30, 2016**

Authorizing, and Implemented or Interpreted Law: **26-1-5; 26-1-15; 26-1-18; 26-1-30(2)(a), (b), (c), (g)**

**Health, Disease Control and
Prevention, Environmental Services
R392-100
Food Service Sanitation**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 42320
FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule requires an amendment in order to define food trucks and to exempt them from this rule. Rather, food truck sanitation requirements will be specified in Rule R392-102, Food Truck Sanitation. (EDITOR'S NOTE: The proposed new Rule R392-102 is under Filing No. 42321 in this issue, December 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: In Section R392-100-2, the change adds definitions for "Food Cart," "Food Truck," and "Ice Cream Truck." In Section R392-100-3, adds a statement that food trucks are exempt from the requirements of this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-15-2 and Subsection 26-1-30(23)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Amending Rule R392-100 will likely not result in a cost or benefit to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Amending Rule R392-100 will likely not result in a cost or benefit to local governments. The 13 local health departments will not change how food trucks are regulated due to these changes. Food trucks will just be addressed in a separate rule, but all the same current practices will still be in place.
- ◆ **SMALL BUSINESSES:** Amending Rule R392-100 will likely not result in a cost or benefit to small businesses. There are 76 small businesses currently providing mobile food services in Utah that will be impacted by these changes. These 76 businesses operate in the state under the NAICS code of 722330. These businesses will still be held to the same standards under which they currently operate, just not under this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Amending Rule R392-100 will likely not result in a cost or benefit to non-small businesses. There are no non-small businesses identified in Utah that will be impacted by these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Amending Rule R392-100 will likely not result in a cost or benefit to any single person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments update the rule to coordinate with the newly proposed Rule R392-102 addressing food trucks. The changes define food trucks and exempt food trucks from this rule since food trucks will be governed by Rule R392-102 and in accordance with S.B. 250 passed during the 2017 General Session. The proposed changes in this rule have no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov 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 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

	FY 2018	FY 2019	FY 2020
Fiscal Costs			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0

Fiscal Benefits

State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
<hr/>			
Net Fiscal Benefits:	\$0	\$0	\$0

The proposed amendments to Rule R392-100 will not have a fiscal impact to businesses. These amendments transfer operation and regulatory requirements to Rule R392-102 and do not introduce any additional costs or savings to affected businesses.

76 businesses in Utah will be affected by the proposed rule.

76 small businesses in Utah will be affected by the proposed rule.

The anticipated average fiscal benefit to each affected business in the first year after implementation of the proposed rule is \$0 with an ongoing benefit of \$0 for each year thereafter.

R392. Health, Disease Control and Prevention, Environmental Services.

R392-100. Food Service Sanitation.

R392-100-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Definitions.

- (1) "Food Cart" means a cart:
 - (a) that is not motorized; and
 - (b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.
- (2)(a) "Food Truck" means a fully encased food service establishment:
 - (i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and
 - (ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food Truck" does not include a food cart or an ice cream truck.

(3) "Ice Cream Truck" means a fully encased food service establishment:

(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;

(b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;

(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and

(d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.

R392-100-3. General Requirements.

(1) Food trucks as defined in this rule and in R392-102 are exempt from this rule. Food Trucks shall abide by R392-102.

R392-100-[2]4. Incorporation by Reference.

(1) The Department incorporates by reference the following:

(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.

(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.

(2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:

- (a) Subsection 5-203.15(B);
- (b) Subsections 5-402.11(B), (C) and (D);
- (c) Subsections 8-302.14(D) and (E);
- (d) Subsection 8-304.11(K);
- (e) Annex 1, Section 8-905.40;
- (f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);
- (g) Annex 1, Section 8-909-20;
- (h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).

(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.

(a) In section 1-201.10(B), Terms Defined, a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:

- (i) Core Item(1) is amended to read:
 "(1) "Core Item" also referred to as "non-critical" means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."
- (ii) Food Establishment(2) is amended to add paragraph (C) to read:

"(2)(c) Catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."

(iii) A definition of Potentially Hazardous Food is added to read:

"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."

(iv) Priority Item(1) is amended to read:

"(1) "Priority Item" also referred to as "critical 1" means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with food borne illness or injury and there is no provision that more directly controls the hazard."

(v) Priority Foundation Item(1) is amended to read:

"(1) "Priority Foundation Item" also referred to as "critical 2" means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."

(b) After section 2-102.12, a new section is added to read: "2-102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26-15a, UCA and R392-101. Food employees shall be trained in food safety as required under Section 26-15-5 and shall hold a valid food handler's card issued by a local health department."

(c) Paragraph 3-201.16(A) is amended to read:

"(A) Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(d) Section 3-501.17 is amended to include additional paragraph (H):

"(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:

(1) before which food must be used as specified in paragraph (A) or this section; or

(2) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) is amended to read:

"(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:

(a) the time food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) After Section 4-204-123 a new section is added to read:

"4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(g) Section 5-101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(h) Section 5-202.13 is deleted and replaced to read:

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch).

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of

the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(i) Paragraph 5-203.15(A) is amended to read:

"(A) If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from any copper in the water supply."

(j) Paragraph 5-402.11(A) is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(k) Section 8-103.10 Modifications and Waivers is amended to read:

"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Section 8-103.11 is amended to add paragraph (D) to read:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times."

(m) Paragraph 8-302.14(C) is amended to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Paragraph 8-304.10(A) is amended to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(o) Paragraph 8-401.10(A) is amended to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(p) Subparagraph 8-401.10(B)(2) is amended to read:

"(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

(q) Section 8-501.10 is amended to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(r) Annex 1, Section 8-601.10 is amended to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(s) Annex 1, Section 8-801.30 is amended to read:

"Service is effective at the time the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(t) Annex 1, Section 8-903.10 is amended to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of this code."

(u) Annex 1, Section 8-903.60 is amended to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(v) Annex 1, Section 8-903.90 is amended to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(w) Annex 1 Section 8-904.30 heading is amended to read:

"8-904.30 Contents of the Summary Suspension Notice."

(x) Annex 1, Paragraph 8-905.10(A) is amended to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(y) Annex 1, Section 8-905.20 is amended to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(z) Annex 1, Subparagraph 8-905.50(A)(1) is amended to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

(aa) Annex 1, Subparagraph 8-905.50(A)(2) is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

(ab) Annex 1, Section 8-905.60 heading is amended to read:

"8-905.60 Notice of Hearing Contents."

(ac) Annex 1, Section 8-905.80 heading is amended to read:

"8-905.80 Expeditious and Impartial Hearing."

(ad) Annex 1, Section 8-905.90 heading is amended to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ae) Annex 1, Paragraph 8-905.90(A) is amended to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(af) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(ag) Annex 1, Section 8-907.60 is amended to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(ah) Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(ai) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is amended to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."

(aj) Annex 1, Section 8-913.10 headline is amended to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(ak) Annex 1, Paragraph 8-913.10(B) is amended to read:

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition,

or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding \$5,000."

(al) Annex 1, Section 8-913.10 is amended to add the paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

R392-100-[3]5. Construction Standards.

(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

KEY: public health, food services, sanitation, food

Date of Enactment or Last Substantive Amendment: [~~May 23, 2016~~2018]

Notice of Continuation: January 20, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2

Health, Disease Control and Prevention, Environmental Services **R392-102** Food Truck Sanitation

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 42321

FILED: 11/13/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Food truck operators and local health departments have indicated a need for an improvement in the uniform operation and regulation of food trucks including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements.

SUMMARY OF THE RULE OR CHANGE: This proposed rule requires a food truck operator to adhere to uniform statewide standards for constructing, operating, and maintaining a food truck in a manner that safeguards public health and ensures that food is safe, unadulterated, and honestly presented when offered to the consumer. This rule sets uniform standards for the operation and regulation of food trucks.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-15-2 and Subsection 26-1-30(23)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Enacting Rule R392-102 will likely not result in a cost or benefit to the state budget.

◆ **LOCAL GOVERNMENTS:** Enacting Rule R392-102 will likely result in a direct fiscal cost of \$1,150 per year

individually to local governments, particularly to the 13 local health departments, due primarily to a loss of revenue previously generated from fees for permits, plan reviews, and inspections. No other costs to local governments are anticipated. The aggregate annualized fiscal cost to local governments is anticipated to be approximately \$15,000.

◆ **SMALL BUSINESSES:** Enacting Rule R392-102 will likely result in a direct fiscal benefit to small businesses due to proposed changes in permit fees as well as uniform standards for the operation and regulation of food trucks, inspections, plan reviews, construction, sanitary operations, and equipment requirements as well as simplification of the process of obtaining additional permits. There are 76 small businesses currently providing mobile food services in Utah that will be impacted by these changes. These 76 businesses operate in the state under the NAICS code of 722330. The approximate expected benefit to each affected small business in the first year after implementation of the proposed rule is \$1,325 with an ongoing savings of \$1,325 for each year thereafter. The aggregate annualized fiscal benefit to small businesses is anticipated to be approximately \$100,000.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no non-small businesses identified in Utah that will be impacted by these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule seeks to simplify the process of obtaining additional food truck permits, and because it will likely result in a fiscal benefit to food truck operators, some non-mobile food service establishments may experience an indirect fiscal impact. However, the fiscal cost to non-mobile food service businesses is inestimable because the relevant data is unavailable and the cost of acquiring the relevant data is prohibitively expensive.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is proposed in accordance with S.B. 250, enacted in the 2017 General Session, and in consultation with local health departments (LHDs). Previously, food trucks were generally governed by Rule R392-100. However, S.B. 250 required local government to establish a truck/card licensing process; reciprocity in fees, permits and inspection; address food truck/cart events that require permitting; and the creation of a Utah Fire Prevention Board with authority to inspect food trucks/carts. LHD's in cooperation with the Department of Health (Department) determined that the best way to comply with the statutory requirements was to support an administrative rule adopted by the Department that could be uniformly followed by all affected local governments and municipalities. This proposed sanitation rule establishes consistent standards across the State. It mirrors the sanitation requirements set out in Rule R392-100 but tailored for a food truck operation. Small business food truck operators will benefit fiscally from this rule because it simplifies the permitting process and there is no relevant available data applicable to other types of businesses which

do not operate food trucks. (EDITOR'S NOTE: The proposed amendment to Rule R392-100 is under Filing No. 42320 in this issue, December 1, 2017, of the Bulletin.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrishnelson@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 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

	FY 2018	FY 2019	FY 2020
Fiscal Costs			
State Government	\$0	\$0	\$0
Local Government	\$15,000	\$15,000	\$15,000
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Costs:	\$15,000	\$15,000	\$15,000

Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$100,000	\$100,000	\$100,000

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits: \$100,000 \$100,000 \$100,000

Net Fiscal Benefits: \$85,000 \$85,000 \$85,000

The proposed rule will result in a beneficial fiscal impact to business due to proposed changes in permit fees as well as uniform standards for the operation and regulation of food trucks, including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements.

76 businesses in Utah will be impacted by the proposed rule.

76 small businesses in Utah will be impacted by the proposed rule.

The anticipated average fiscal benefit to each affected business in the first year after implementation of the proposed rule is \$1,325 with an ongoing benefit of \$1,325 for each year thereafter.

R392. Health, Disease Control and Prevention, Environmental Services.

R392-102. Food Truck Sanitation.

R392-102-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5, 26-1-30(23), and 26-15-2.

(2) This rule requires a food truck operator to adhere to uniform statewide standards for constructing, operating, and maintaining a food truck in a manner that safeguards public health and ensures that food is safe, unadulterated, and honestly presented when offered to the consumer.

(3) This rule sets uniform standards for the operation and regulation of food trucks, including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements.

R392-102-2. Definitions.

(1) "Catering operation", as defined in this rule, means a food truck that contracts with a client for food service to be provided to the client or the client's guests or customers at a private event on private property. A catering operation does not include services routinely provided at the same location, or meals that are purchased individually by guests or customers.

(2) "Commissary" means a food service establishment permitted by a local health department according to Rule R392-100 to which a food truck operator may return regularly to perform functions necessary for sanitary operations including:

- (a) food preparation and boarding onto the food truck;
- (b) hot and cold holding of time/temperature controlled for safety (TCS) foods;
- (c) storing and stocking of food, utensils, and equipment;

(d) disposal of solid and liquid wastes;
 (e) equipment and utensil cleaning and sanitizing;
 (f) vehicle cleaning;
 (g) refilling of water tank(s) with potable water; and
 (h) utilizing electrical power sources.

(3) "FDA Food Code" or "Food Code" means the most recent FDA Model Food Code as adopted by reference with amendments in Rule R392-100. When FDA Food Code is referenced in this rule, the term 'establishment' or 'food establishment' used in the FDA Food Code shall be synonymous with 'food truck' as defined in this rule.

(4) "Food cart" means a cart:
 (a) that is not motorized; and
 (b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.

(5) "Food processing plant" means a commercial operation inspected by a regulatory authority, such as the United States Department of Agriculture (USDA), U.S. Food and Drug Administration (FDA), or the Utah Department of Agriculture and Food (UDAF), that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments. A food processing plant does not include a food establishment.

(6) "Food service establishment" means an operation that:
 (a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant, satellite or catered feeding location; and
 (b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(7)(a) "Food truck" means a fully encased food service establishment:
 (i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and
 (ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food Truck" does not include a food cart, a shaved ice establishment, or an ice cream truck.

(8) "Food truck operator" or "operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the operation of a food truck.

(9) "Food truck employee" means a person working with unpackaged food, food equipment or utensils, or food contact surfaces in a food truck.

(10) "Ice cream truck" means a fully encased food service establishment:
 (a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;
 (b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;
 (c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and
 (d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.

(11) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.

(12) "Local health department" has the same meaning as provided in Section 26A-1-102(5).

(13) "Local health officer" means the director of the jurisdictional local health department or a designated representative.

(14) "Person in charge" means the individual present at a food truck who is responsible for its operation at the time of the inspection.

(15) "Potentially hazardous food (PHF)" or "Time/temperature control for safety food (TCS)" has the same meaning as described in the FDA Food Code.

(16) "Primary permit" means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department wherein the majority of the food truck's operations take place.

(17) "Sanitized" means the application of cumulative heat or chemicals on cleaned food, ice, or potable water contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(18) "Shaved ice establishment" means a facility that would normally be classified as a food truck as defined in this rule that serves only shaved ice with flavored syrups and other toppings approved by the local health officer, and is operating from a fixed, single location without moving offsite throughout the entire operating season.

(19) "Secondary permit" means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department to a food truck operator who has a current primary permit from another local health department within the state.

R392-102-3. Commissary Requirements.

(1) No food or equipment may be stored at a home residence, storage unit, garage, or other unapproved structure.

(2) A food truck operator shall use a commissary unless exempted by the local health officer issuing a primary permit as described in Section R392-102-5.

(3) If a food truck commissary is required:
 (a) The food truck operator shall use a commissary located within a local health jurisdiction approved by the local health department issuing the primary permit.
 (b) The food truck operator must obtain a written, signed commissary agreement from the commissary operator, which shall be renewed annually, and any changes to the agreement shall be submitted to the local health department issuing the primary permit prior to the changes being implemented;
 (c) The operator shall return the food truck to the commissary at a regular frequency, as determined and approved by the local health department issuing the primary permit;
 (d) The operator must park the food truck at a location approved by the local health department issuing the primary permit at the end of daily operations;

_____ (e) The operator shall document presence at the commissary on a log provided by the commissary operator according to the frequency determined and approved by the local health officer;

_____ (i) The operator shall record the date, time in, time out, and initials.

_____ (ii) The operator shall retain commissary records for one year, and shall make the records available for inspection by a local health officer upon request.

_____ (f) The operator must have access to, and the ability to utilize:

_____ (i) a 3-compartment sink and other approved warewashing equipment;

_____ (ii) adequate hot and cold holding equipment as necessary for proper food storage;

_____ (iii) a service sink with hot and cold water under pressure;

_____ (iv) at least one handsink with pressurized hot and cold water that is conveniently located and used exclusively for hand washing;

_____ (v) a conveniently located toilet room; and

_____ (vi) approved methods and equipment to clean and sanitize food and non-food contact

Surfaces with in the food truck.

_____ (g) The food truck operator shall use a commissary which provides adequate space for the sanitary storage of food, equipment, utensils, linens, and single-service, or single-use articles; and

_____ (h) The food truck operator shall use a commissary which has an electrical outlet available for food truck use, if needed, when parked at the commissary;

_____ (i) An electrical installation intended for food truck use at a commissary shall comply with applicable codes and ordinances including the state electrical code.

_____ (ii) Not more than one food truck shall be served by one electrical outlet at a time.

_____ (4) If a commissary's operating permit is terminated, revoked, or suspended, all associated primary and secondary food truck permits shall be invalidated until the commissary permit is reinstated or the food truck operator obtains a new commissary agreement at an approved location, at which point the primary and secondary food truck permits shall be reissued with the original expiration date.

R392-102-4. Food Truck Permit Requirements.

_____ (1) A person shall not operate a food truck without a valid permit to operate issued by a local health department.

_____ (2) A food truck operator shall only operate a food truck after:

_____ (a) obtaining a temporary food establishment permit from a local health department when only operating at a fixed location for no more than 14 consecutive days; or

_____ (b) obtaining an annual primary permit from the local health department wherein the majority of the food truck's operations will take place.

_____ (3) In order to obtain a primary permit, a food truck operator shall:

_____ (a) provide the following information to the local health department issuing the primary permit:

_____ (i) name, title, contact information, and signature;

_____ (ii) evidence of food safety manager certification as required in Subsection R392-102-4(19)

_____ (iii) ownership status of the food truck (e.g. individual, partnership, corporation, etc.)

_____ (iv) name of the food truck business or "dba";

_____ (v) food truck license plate number;

_____ (vi) a complete list of menu items if there has been a menu change or if it was not previously submitted with plans as required in Section R392-102-5;

_____ (vii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation;

_____ (viii) a copy of the written commissary agreement as described in Subsection R392-102-3(3)(b), unless exempted by the local health officer; and

_____ (ix) documentation of an approved servicing area if the commissary is not properly equipped to provide potable water or electricity to, or to receive wastewater from a food truck; and shall

_____ (b) pay a primary permit fee;

_____ (c) submit plans for review as described in Section R392-102-5;

_____ (d) complete necessary changes resulting from the review of plans, as required; and

_____ (e) complete a pre-operational inspection, as described in Subsection R392-102-16(8).

_____ (4) An issued primary permit shall include the following information:

_____ (a) name of the issuing local health department;

_____ (b) name of the permitted food truck, as provided on the application;

_____ (c) license plate of the associated food truck;

_____ (d) expiration date;

_____ (e) permit tier designation as described in Subsection R392-102-4(5)(b); and

_____ (f) the written words, "Primary Permit".

_____ (5)(a) Primary and secondary permit fees shall be uniform statewide and may only be in an amount that reimburses the local health department for the cost of administering the food truck sanitation program.

_____ (b) The local health department shall use a two-tier risk based assessment to determine an appropriate primary permit fee as follows:

_____ (i) A primary permit shall be designated as "tier-one" when the food truck operator's menu includes fewer than three potentially hazardous foods, and when raw animal products are not included as a menu ingredient.

_____ (ii) A primary permit shall be designated as "tier-two" when the food truck operator's menu includes three or more potentially hazardous foods, or when raw animal products are included as a menu ingredient.

_____ (iii) The amount of a tier-one primary permit fee shall be reduced, as compared to a tier-two primary permit fee, to account for the lower regulatory burden.

_____ (6) If an application for a primary permit is denied, the food truck operator may request information from a local health officer that includes:

_____ (a) the specific reasons and rule citations for permit denial; and

_____ (b) any actions the applicant must take to qualify for a primary permit.

(7) A food truck operator shall obtain a secondary permit before operating a food truck in any local health department jurisdiction other than the jurisdiction of the local health department that issued the primary permit as described in Subsection R392-102-4(2)(b).

(8) In order to obtain a secondary permit, a food truck operator shall:

(a) provide the following information to the local health department issuing the secondary permit:

(i) a copy of the primary permit;

(ii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation within the jurisdiction of the local health department issuing the secondary permit; and shall

(b) pay a secondary permit fee;

(9) An issued secondary permit shall contain the following information:

(a) name of the issuing local health department;

(b) name of the permitted food truck, as provided on the application;

(c) license plate of the associated food truck;

(d) expiration date which shall be the same as the expiration date printed on the primary permit provided by the food truck operator as required in Subsection R392-102-4(8)(a)(i); and

(e) the written words, "Secondary Permit".

(10)(a) A secondary permit fee shall only be in an amount that reimburses the local health department for the cost of permitting and inspecting the food truck.

(b) A secondary permit fee shall be no more than one-half of a tier-one primary permit fee, and shall be the same regardless of expiration date of the primary permit.

(11) A local health department issuing a secondary permit may not:

(a) impose any additional permit conditions or qualifications on a food truck operator; or

(b) require a plan review or a pre-operational inspection before issuing or renewing the permit.

(12) When acting as a catering operation, a food truck operator may operate in a health department jurisdiction other than the jurisdiction of the health department that issued the primary permit without obtaining either a secondary food truck permit or a temporary food service permit, and without additional inspections from the local health department.

(13)(a) A food truck operator shall comply with permitting requirements as stated in Subsection R392-102-4(3) when renewing a primary permit, and Subsection R392-102-4(8) when renewing a secondary permit.

(b) If a food truck operator elects to renew a primary permit and any secondary permits, it shall be the duty of the operator to renew within thirty calendar days before the expiration date of the current permit.

(14)(a) If a local health officer suspends a primary food truck permit, the local health officer shall notify other applicable local health departments regarding the enforcement actions taken. Any secondary permits issued by other local health departments shall be rendered invalid until the suspended primary permit is reinstated.

(b) If a local health officer suspends a secondary food truck permit, no other permits, whether primary or secondary, from other local health jurisdictions shall be affected.

(15) To reinstate a suspended permit, a food truck operator shall:

(a) complete a pre-operational inspection with the local health department that suspended the permit, as described in Subsection R392-102-16(8), which shows that the food truck is back in compliance with this rule; and

(b) pay an inspection fee.

(16) A food truck permit applied for or issued pursuant to this rule may be denied, suspended, or revoked by the local health officer for any of the following reasons:

(a) Failure of the application or plans to show that the food truck will be operated or maintained in accordance with the requirements of this rule;

(b) Submission of incorrect or false information in the application or plans;

(c) Failure to operate or maintain the food truck in accordance with the application, plans, and specifications approved by the local health department;

(d) Failure of the operator to allow the local health officer to conduct inspections as necessary to determine compliance with this rule;

(e) Failure of the operator to make the food truck available for inspection or to obtain an inspection according the frequency requirements detailed in Subsection R392-102(16)(9);

(f) Operation of the food truck in a way that causes or creates an imminent health hazard;

(g) Violation of any condition upon which the permit was issued; or

(h) Failure to pay a permit fee or inspection fee.

(17) A food truck operator shall post all issued health permits in a conspicuous location.

(18) A food truck permit may not be transferred from one food truck operator to another, from one food truck to another, or from one type of operation to another if the change affects the tier designation as specified in Subsection R392-102-4(5)(b) and the local health department that issued the primary permit has not approved the change.

(19) At least one food truck employee shall:

(a) be certified in food safety management according to the requirements of Rule R392-101, unless exempted by a local health officer according to the criteria listed in Subsection R392-101-8(2) and Section 26-15a-105; and

(b) maintain proof of certification available for review by the local health officer upon request.

(20) (a) All food truck employees shall be trained in food safety as required by Rule R392-103, and shall hold a valid food handler's permit issued by a local health department

(b) The operator shall maintain proof of food handler permit certification of employees and shall provide it to the local health officer upon request.

R392-102-5. Plan Review Requirements.

(1) A food truck operator shall submit to the local health department properly prepared plans and specifications for review and approval before:

(a) the construction of a food truck;

(b) the conversion of an existing vehicle or trailer to a food truck; or

(c) the remodeling of a food truck or a change of food truck type or change in foods served or food service operations which would necessitate a change in risk assessment as described in Subsection R392-102-4(5)(b).

(2) When applying for a primary permit for the first time, the operator of a newly constructed food truck, or food truck in pre-construction shall submit plans to the local health department, which include at least the following:

(a) a complete list of intended menu items;

(b) anticipated volume of food to be stored, prepared, and sold or served;

(c) equipment cut sheets;

(d) plumbing schedule;

(e) mechanical schedule;

(f) dimensional floor plan;

(g) finish schedule for floors, walls, and ceilings;

(h) an equipment layout; and

(i) any additional information required by the local health officer.

(3) When applying for a primary permit for the first time, the operator of a retrofitted or existing food truck shall submit plans to the local health department, which may include the following:

(a) dimensional floor plan;

(b) an equipment layout, including the location of hand wash and food preparation sinks; and

(c) any additional information required by the local health officer.

(4)(a) Except when the food truck has undergone renovation or a change in ownership since the time of permit issuance, an additional plan review is not required before renewing a primary permit.

(b) When the food truck has undergone renovation or a change in ownership since the time of permit issuance, the operator shall comply with Subsection R392-102-5(3).

R392-102-6. Construction and Maintenance Requirements.

(1) Materials for indoor floor, wall, and ceiling surfaces of a food truck shall be:

(a) smooth, durable, and easily cleanable for areas where food is stored, prepared, held under temperature control, or served; and

(b) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, servicing areas, and areas subject to flushing or spray cleaning methods.

(2) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and be designed and constructed to allow easy cleaning and to facilitate maintenance.

(3) Exterior walls and roofs of a food truck shall be constructed of weather-resistant materials, and shall effectively protect the food truck interior from the entry of dust, debris, stormwater, insects, rodents, and other animals.

(4)(a) A food truck operator shall permanently display the business name on the exterior of the food truck in printed letters of at least four inches in height.

(b) The business name printed on the exterior of the food truck shall be the same as the business name or "dba" provided on the application required by Subsection 102-4(3)(a)(iv).

(5) Mats and duckboards shall be designed to be removable and easily cleanable.

(6) Physical facilities shall be maintained in good repair.

(7)(a) Physical facilities shall be cleaned as often as necessary to keep them clean.

(b) Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(8) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Section R392-102-8.

(9) Except as specified in Subsection R392-102-6(10), A food truck operator shall protect outer openings of a food truck against the entry of insects and rodents by:

(a) tight-fitting windows; and

(b) closed, solid, tight-fitting doors.

(10) If the windows or doors of a food truck are kept open for ventilation or food service, the openings shall be protected against the entry of insects and rodents by:

(a) 16 mesh to 1 inch screens; or

(b) other effective means approved by the local health officer.

(11)(a) Light intensity within the interior of the food truck shall be:

(i) at least 540 lux (50 foot candles) at any surface where a food truck employee works with food or utensils;

(ii) at least 215 lux (20 foot candles):

(A) in a toilet room; and

(B) inside equipment such as reach-in and under-counter refrigerators; and

(iii) at least 108 lux (10 foot candles) at a distance of 30 inches (75 cm) above the floor in walk-in refrigeration units and dry food storage areas.

(b) Light bulbs located in the food truck shall be shielded, coated, or otherwise shatter-resistant.

(12) Living quarters and shower or bathing facilities are prohibited on a food truck.

(13)(a) A food truck shall have at least one handwashing sink provided with hot and cold running water.

(b) A local health department issuing a primary permit may require the installation of one or more handwashing sinks as necessary for their convenient use by employees in the following areas:

(i) food preparation, food dispensing, and warewashing areas; and

(ii) in a toilet room.

(14)(a) A food truck shall have a 3-compartment sink installed with hot and cold water under pressure for manually washing, rinsing, and sanitizing equipment and utensils unless exempted by the local health department issuing a primary permit.

(b) Unless exempted, a 3-compartment sink shall meet the following requirements:

(i) the food truck must have sufficient onboard water storage capacity to fill all sink compartments without depleting water storage needed for food truck operations such as handwashing; and

(ii) sink compartments shall be large enough to accommodate immersion of in-use utensils.

R392-102-7. Water and Wastewater Requirements.

(1) A food truck operator shall ensure that potable water is available to a food truck during all hours of operation through:

(a) an onboard potable water storage tank which shall hold a minimum of 30 gallons as measured down from the inlet; or

(b) piping, tubing, or hoses connected to an adjacent potable water source under pressure as approved by the local health officer.

(i) The water supply type described in Subsection R392-102-7(1)(b) is allowed only when the food truck is concurrently connected to a public sanitary sewer system in a manner approved by the local health officer.

(2)(a) The water source and system shall be of sufficient capacity to meet the peak water demands of the food truck.

(b) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food truck.

(3) Materials that are used in the construction of a mobile water tank, food truck onboard water tank, and appurtenances shall be:

(a) safe;

(b) durable, corrosion resistant, and nonabsorbent;

(c) finished to have a smooth, easily cleanable surface; and

(d) designed and intended only for use with potable water.

(4) An onboard water tank shall be:

(a) enclosed from the filling inlet to the discharge outlet;

(b) sloped to an outlet that allows complete drainage of the tank; and

(c) used for conveying potable water and for no other purpose.

(5) If an onboard water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and be:

(a) flanged upward at least 13 mm (one-half inch); and

(b) equipped with a port cover assembly that is:

(i) provided with a gasket and a device for securing the cover in place, and

(ii) flanged to overlap the opening and sloped to drain.

(6) A fitting with "V" type threads on an onboard water tank inlet or outlet shall be allowed only when a hose is permanently attached.

(7) If provided, an onboard water tank vent shall terminate in a downward direction and shall be covered with:

(a) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or

(b) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(8)(a) A water tank and its inlet and outlet shall be sloped to drain.

(b) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(9)(a) A hose, pipe, or tube used for conveying potable water from a water tank shall be:

(i) safe;

(ii) durable, corrosion resistant, and nonabsorbent;

(iii) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;

(iv) finished with a smooth interior surface;

(v) clearly and durably identified as to its use if not permanently attached; and

(vi) prohibited from use in any other service such as conveying wastewater or toxic chemicals.

(b) An operator shall only use a hose designed and intended to convey potable water when filling an onboard water tank as described in Subsection R392-102-7(1)

(10) A food truck operator shall install and maintain a filter that does not pass oil or oil vapors in the air supply line between the compressor and potable water supply system when compressed air is used to pressurize the water tank system.

(11)(a) A cap and keeper chain, closed cabinet, closed storage tube, or other protective cover or device approved by the local health officer shall be provided for a water inlet, outlet, and hose.

(b) The protective cover or device shall be used whenever the water tank or hose inlet and outlet fitting is not in use.

(12) A food truck's onboard water tank inlet shall be:

(a) 19.1 mm (three-fourths inch) in inner diameter or less; and

(b) provided with a hose connection of a size or type that will prevent its use for any other service.

(13) The operator shall flush and sanitize any water tank, pump, and hoses before placing into service after initial purchase, construction, repair, modification, and periods of nonuse of 30 days or more, and as often as necessary to maintain the equipment in clean and sanitary condition.

(14) A food truck operator shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(15)(a) A wastewater holding tank in a food truck shall be:

(i) sized 15 percent larger in capacity than the water supply tank; and

(ii) sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(b) Subsection R392-102-7(15)(a)(i) does not apply to a potable water tank that is used only for beverage service on a food truck and is not connected to a wastewater holding tank.

(16) Wastewater shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of wastewater transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality, Division of Water Quality under Title R317;

(c) Local health department and municipal regulations; and

(d) the local sewer district having jurisdiction.

(17)(a) Wastewater and other liquid wastes shall be removed from a food truck at an approved commissary or a waste servicing area approved by the local health officer or by a wastewater transport vehicle in such a way that a public health hazard or nuisance is not created.

(b) A food truck operator shall thoroughly flush and drain a tank for liquid waste retention in a sanitary manner during the servicing operation.

(18) Wastewater or liquid waste conveyance lines that are not shielded to intercept drips shall be installed or located under food and food contact surfaces.

(19) The operator shall store potable water pipes, hoses, and tubes separately from wastewater pipes, hoses, and tubes in a manner that prevents cross contamination.

R392-102-8. Equipment Requirements.

(1) Materials that are used in the construction of utensils and equipment food contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

- (a) safe;
- (b) durable, corrosion-resistant, and nonabsorbent;
- (c) sufficient in weight and thickness to withstand repeated washing;
- (d) finished to have a smooth, easily cleanable surface; and
- (e) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

(2)(a) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

(b) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(3) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(4) Hot oil filtering equipment shall be readily accessible for filter replacement and cleaning of the filter and meet the requirements of Subsection R392-102-8(1).

(5) Galvanized metal may not be used for utensils and food contact surfaces of equipment that are used in contact with acidic food.

(6) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(7)(a) Except as specified in (b), (c), and (d) of this section, wood and wood wicker may not be used as a food-contact surface.

(b) Hard maple or an equivalently hard, close-grained wood may be used for:

- (i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
- (ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.

(c) whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

- (i) untreated wood containers; or
- (ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.

(8)(a) Multiuse food contact surfaces shall be:

- (i) smooth;
- (ii) free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
- (iii) free of sharp internal angles, corners, and crevices;
- (iv) finished to have smooth welds and joints; and
- (v) accessible for cleaning and inspection.

(9)(a) Equipment that is fixed in place because it is not easily movable shall be installed so that it is:

(i) spaced to allow access for cleaning along the sides, behind, and above the equipment;

(ii) spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or

(iii) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(b) counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(i) sealed; or

(ii) elevated on legs to provide not less than four inches of clearance.

(10) Floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a six inch (15 centimeter) clearance between the floor and the equipment.

(11) Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(12) Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(13) Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing. Sufficient space must be provided for storage of soiled and cleaned items that may accumulate during hours of operation, such as on drainboards, utensil racks, or tables.

(a) Soiled and clean items must be stored separately and in a manner that protects clean items from contamination.

(14) A plumbing fixture such as a handwashing sink or toilet shall be easily cleanable.

(15) Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity, and shall be capable of consistently maintaining food temperatures as specified under Section R392-102-12.

(a) In a mechanically refrigerated or hot food storage unit, the sensor or thermometer shall be located to measure the ambient temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(16) A food truck operator with a menu offering any potential hazardous foods shall equip the food truck with at least one readily accessible and properly calibrated food temperature measuring device.

(a) Food temperature measuring devices may not have sensors or stems constructed of glass unless the thermometer with a glass sensor or stem is encased in a shatterproof coating such a candy thermometer.

(b) Temperature measuring devices shall be easily readable.

(17) When manual warewashing of utensils or food-contact equipment is done on a food truck, the food truck operator shall provide a test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions.

(a) If hot water is used for sanitization in manual warewashing operations in a food truck, the sanitizing compartment of the sink shall be:

(i) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171 deg F; and

(ii) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(18)(a) Receptacles and waste handling units for refuse and recyclables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(b) Receptacles and waste handling units for refuse and recyclables used with materials containing food residue and used outside the food truck shall be:

(i) designed and constructed to have tight-fitting lids, doors, or covers; and

(ii) maintained in good repair.

(c) Refuse and recyclables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(d) Receptacles and waste handling units for refuse and recyclables shall be kept covered inside the food truck:

(i) if the receptacles and units contain food residue and are not in continuous use, or

(ii) after they are filled.

(19) Refuse and recyclables shall be removed from the food truck premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(20) A food truck operator shall furnish or equip a food truck with adequate electrical power to ensure uninterrupted service.

R392-102-9. Requirements for Cleaning Equipment and Utensils.

(1) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(2) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(4) Equipment food-contact surfaces and utensils shall be cleaned and sanitized:

(a) before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;

(b) Each time there is a change from working with raw foods to working with ready-to-eat foods;

(c) Between uses with raw fruits and vegetables and with TCS food;

(d) Before using or storing a food temperature measuring device; and

(e) At any time during the operation when contamination may have occurred.

(f) Equipment food contact surfaces and utensils shall be cleaned throughout the day at least every four hours if used with TCS food.

(g) Utensils and equipment contacting food that is not TCS shall be cleaned:

(i) At any time when contamination may have occurred;

(ii) At least every 24 hours;

(iii) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(iv) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup,

dispensing lines or tubes, coffee bean grinders, and water vending equipment:

(A) At a frequency specified by the manufacturer; or

(B) At a frequency necessary to preclude accumulation of soil or mold.

(5) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment.

(6) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(7) Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(8) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(9) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

(10) Washed utensils and equipment shall be rinsed, after cleaning and prior to sanitizing, so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(a) Use of a distinct, separate water rinse after washing and before sanitizing if using:

(i) A 3-compartment sink, or

(ii) Alternative manual warewashing equipment equivalent to a 3-compartment sink as approved by the local health department issuing the primary permit.

(11) Equipment food-contact surfaces and utensils shall be sanitized before use after cleaning. Sanitizers and sanitizing operations shall meet the requirements in Section R392-102-10.

(12) After cleaning and sanitizing, equipment and utensils shall be air-dried or used after adequate draining.

(13) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(14)(a) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(i) maintained dry; and

(ii) used for no other purpose.

(b) Cloths in-use for wiping counters and other equipment surfaces shall be:

(i) held between uses in a container of chemical sanitizer solution at a concentration specified under Subpart 4-501.114 of the FDA Food Code; and

(ii) laundered daily.

(c) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(d) Dry wiping cloths and the chemical sanitizing solutions specified in Subsection R392-102-9(14) in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(e) Containers of chemical sanitizing solutions specified in Subsection R392-102-9(14)(b)(i) in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that

prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

(f) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(15) Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(16) Cleaned and sanitized equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

(a) in a clean, dry location;

(b) where they are not exposed to splash, dust, or other contamination; and

(c) at least six inches (15 cm) above the floor.

(17) Clean and sanitized equipment and utensils shall be stored as specified under Section 104-8(13) and shall be stored:

(a) in a self-draining position that allows air drying; and

(b) covered or inverted.

(18) The wash, rinse, and sanitize solutions shall be maintained clean.

(19) Single-service and single-use articles may not be reused.

(20) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

R392-102-10. Requirements for Sanitizing Equipment and Utensils.

(1) Chemical sanitizers, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to food-contact surfaces shall:

(a) Meet requirements specified in 40 CFR 180.940 and 40 CFR 180.2020; and

(b) Be used in accordance with the EPA-registered label use instructions.

(2) Chlorine sanitizer solutions shall have a minimum concentration and temperature:

(a) of 25 to 49 mg/L at 120 deg F.

(i) with an associated contact time of 10 seconds;

(b) of 50 to 99 mg/L at 100 deg F, pH of 10 or less, or 75 deg F, pH or 8 or less.

(i) with an associated contact time of 7 seconds; or

(c) of 100 mg/L at 55 deg F.

(i) with an associated contact time of 10 seconds.

(3) Iodine sanitizing solutions shall have a:

(a) Minimum temperature of 68 deg F;

(b) pH of 5.0 or less of a pH no higher than the level for which the manufacturer specifies the solution is effective;

(c) Concentration between 12.5 mg/L and 25 mg/L; and

(d) Contact time of at least 30 seconds.

(4) Quaternary ammonium compound solutions shall:

(a) Have a minimum temperature of 75 deg F;

(b) Have a concentration as indicated by the manufacturer's use directions included in the labeling;

(c) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; and

(d) Have a contact time of at least 30 seconds.

(5) Hot water sanitization, without the use of chemicals, shall be accomplished by:

(a) Manual immersion for at least 30 seconds in water held at a minimum temperature of 171 deg F or higher;

(b) Being cycled through equipment which:

(i) the temperature of the sanitizing rinse as it enters the manifold may not be more than 194 deg F or less than 165deg F for stationary racks or 180 deg F for all other machines; and

(ii) achieves a utensil surface temperature of 160 deg F as measured by an irreversible registering temperature indicator.

R392-102-11. Food Safety Requirements.

(1)(a) Food shall be safe, unadulterated, and honestly presented.

(b) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(c) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

(2) Food shall be obtained from sources that comply with Rule R392-100.

(3) Food prepared in a private home or any structure or dwelling designed, constructed, or intended for human occupancy shall not be used in a food truck or offered from a food truck for human consumption.

(4) Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(5) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(6) Eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in 21 CFR 101.17(h).

(a) Eggs shall be received clean and sound and shall not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified Rule R70-410.

(b) Egg products shall be obtained pasteurized.

(c) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not cooked.

(i) Raw, unpasteurized eggs may be used in recipes that will not be cooked if the food truck has obtained a variance from the primary permit issuer, which variance is based on a commissary HACCP plan; and

(ii) The local health officer may revoke or suspend a permit and variance if the commissary HACCP plan is not being followed.

(7) Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified in Rule R70-310.

(8) Fish and molluscan shellfish that are received for sale or service shall be commercially and legally caught or harvested.

(a) Molluscan shellfish that are recreationally caught may not be received for sale or service.

(b) Molluscan shellfish, shucked shellfish and shellstock shall comply with 3-202.17, 3-202.18, 3-203.11, and 3-203.12 of the 2013 FDA Food Code as adopted in Rule R392-100.

(c) When received by a food truck, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock, or those with badly broken shells, shall be discarded.

(9) Mushroom species picked in the wild shall not be offered for sale or service by a food truck.

(10) If game animals are received for sale or service they shall meet the requirements of 3-201.17 of the 2013 FDA Food Code as adopted and amended in R392-100.

(11) Ice for use as a food or a cooling medium shall be made from drinking water.

(12) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(13) Ice may not be used as food after use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment.

(14) Food shall only contact surfaces of equipment and utensils that are cleaned and sanitized as specified in Sections R392-102-9 and R392-102-10 or single-service and single-use articles.

(a) Linens, such as cloth napkins, shall not be used in contact with food.

(15)(a) Except as specified in (b) and (c) of this subsection, food shall be protected from contamination by storing the food:

(i) in a clean, dry location;
(ii) where it is not exposed to splash, dust, or other contamination; and

(iii) at least six inches (15 cm) above the floor.

(b) Pressurized beverage containers and cased food in waterproof containers such as bottles or cans may be stored on a floor that is clean and not exposed to floor moisture.

(c) Food in packages and working containers may be stored less than six inches above the floor on case lot handling equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods.

(16) Food shall not be stored:

(a) in toilet rooms;

(b) under sewer lines;

(c) under open stairwell;

(d) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed; or

(e) under other sources of contamination.

(17) Food shall be protected from cross contamination by:

(a) separating raw animal foods during storage, preparation, holding, and display from:

(i) raw ready-to-eat food, and

(ii) cooked ready-to-eat food;

(b) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by: (i) using separate equipment for each type; or

(ii) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(iii) preparing each type of food at different times or in separate areas.

(c) Cleaning hermetically sealed containers of food of visible soil before opening;

(d) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(e) Storing and segregating damaged, spoiled, or recalled food in designated areas within the food truck that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

(f) Separating fruits and vegetables before they are washed from ready-to-eat food.

(18) Food shall be protected from contamination that may result from a factor or source not specified in this section.

(19) Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food truck, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(20) Food shall be protected from contamination that may result from the addition of:

(a) unsafe or unapproved food or color additives; and

(b) unsafe or unapproved levels of approved food and color additives.

(21) An operator shall not:

(a) Apply sulfating agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or

(b) Except for grapes, serve or sell food specified under the previous subsection (21)(a) of this section that is treated with sulfating agents before receipt by the food truck.

(22)(a) A food truck operator shall not prepare food on a food truck using "specialized processing methods" as described in the currently adopted FDA Food Code incorporated by reference in Rule R392-100. A food truck operator may not obtain a variance from a local health officer to use specialized processing methods on a food truck.

(b) A food truck operator shall remove time/temperature controlled for safety (TCS) food from reduced oxygen packaging before holding or storing the food in a temperature controlled environment on a food truck.

(23) Food shall be protected from contamination that may result from a factor or source not specified elsewhere in this rule.

R392-102-12. Food Temperature Requirements.

(1)(a) Refrigerated, potentially hazardous food shall be at a temperature of 5 deg C (41 deg F) or below when received at the food truck from a commissary or other approved source.

(b) Raw eggs shall be received at the food truck from a commissary or other approved source in refrigerated equipment that maintains an ambient air temperature of 7 deg C (45 deg F) or less.

(c) Potentially hazardous food that is cooked to a temperature and for a time specified under Subparts 3-401.11 to 3-401.13 of the FDA Food Code and received hot at the food truck from a commissary or other approved source shall be at a temperature of 57 deg C (135 deg F) or above.

(d) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen at the food truck from a commissary or other approved source.

(e) Upon receipt at the food truck from a commissary or other approved source, potentially hazardous food shall be free of evidence of previous temperature abuse.

(2) Any food requiring cooking, freezing, or reheating before service shall be cooked, frozen, or reheated as required in Part 3-4 of the FDA Food Code.

(3) Stored frozen foods shall be maintained frozen. Commercially processed foods which are labeled to be kept frozen must be kept frozen until cooked or served.

(a) Commercially processed foods labeled to be kept frozen may be thawed under refrigeration at 41 deg F or below in accordance with Subsection R392-102-12(4) if:

(i) Records are kept or date marking used indicating when the food entered refrigeration; and

(ii) Discarded seven days after entering the refrigerator.

(4) Any food requiring thawing shall be thawed as required in Subpart 3-501.13 of the FDA Food Code.

(5) Any food requiring cooling shall be cooled in the commissary as required in Subparts 3-501.14 and 3-501.15 of the FDA Food Code. The operator shall not cool cooked time/temperature control for safety (TCS) food on the food truck unless exempted by the local health officer issuing the primary permit.

(6) Except during preparation, cooking, or cooling time/temperature control for safety food (TCS) shall be maintained:

(a) at 57 deg C (135 deg F) or above, or

(b) at 5 deg C (41 deg F) or less.

(7)(a) Ready-to-eat, TCS food prepared and held for more than 24 hours at a temperature of 5 deg C (41 deg F) or less in a food truck shall be clearly marked to indicate the date or day by which the food shall be consumed, sold, or discarded, which date shall be a maximum of 7 days from the date of preparation, with the day of preparation being counted as Day 1.

(b) Ready-to-eat, TCS food prepared and packaged by a food processing plant and is opened and held for more than 24 hours at a temperature of 5 deg C (41 deg F) or less in a food truck shall be clearly marked at the time the original container is opened in a food truck to indicate the date or day by which the food shall be consumed, sold, or discarded, with the day the original container is opened being counted as Day 1, and

(i) The day or date marked by the food truck may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

(8) A refrigerated, ready-to-eat time/temperature control for safety food ingredient or a portion of a refrigerated, ready-to-eat, time/temperature control for safety food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(9) A food specified in Subsection R392-102-12(7) shall be discarded if it:

(a) exceeds the temperature and time combination specified in Subsection R392-102-12(7), except time that the product is frozen;

(b) is in a container or package that does not bear a date or day; or

(c) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in Subsection R392-102-12(7).

R392-102-13. Poisonous or Toxic Materials.

(1) Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

(2) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

(3) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(a) separating the poisonous or toxic materials by spacing or partitioning; and

(b) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.

(4) Only those poisonous or toxic materials that are required for the operation and maintenance of a food truck, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food truck.

(5) Poisonous or toxic materials shall be:

(a) used according to:

(i) Rule R392-100 and local health department regulations,

(ii) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment.

(iii) the conditions of certification for use of the pest control materials, and

(iv) additional conditions that may be established by the local health officer; and

(b) applied so that:

(i) a hazard to employees or other persons is not constituted, and

(ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented. This is achieved by:

(A) removing the items,

(B) covering the items with impermeable covers, or

(C) taking other appropriate preventive actions, and

(D) cleaning and sanitizing equipment and utensils after the application.

(6) The food truck shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the food truck by:

(a) routinely inspecting incoming shipments of food and supplies;

(b) routinely inspecting the food truck for evidence of pests;

(c) using pest management methods, if pests are found, such as trapping devices, eliminating harborage, or other means of pest control.

(7) Restricted use pesticides shall not be used in a food truck.

(8) A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

(9) Rodent bait shall be contained in a covered, tamper-resistant bait station.

(10) Tracking powder may not be used inside of a food truck unless the powder is non-toxic, such as flour or talcum powder, and is used in such a manner that it cannot contaminate food, equipment, utensils, linens, and single-service or single-use articles.

R392-102-14. Personal Cleanliness and Protection from Contamination.

(1) Food truck employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

(2) Food truck employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(3) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(4) Food truck employees shall keep their hands and exposed portions of their arms clean using the cleaning procedure specified in Subpart 2-301.12 of the FDA Food Code immediately before engaging in handling of food or clean equipment and utensils and:

(a) after touching bare human body parts other than clean hands and clean, exposed portions of arms;

(b) after using the toilet room;

(c) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(d) after handling soiled equipment or utensils;

(e) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(f) when switching between working with raw food and working with ready-to-eat food;

(g) before donning gloves to initiate a task that involves working with food; and

(h) after engaging in other activities that contaminate the hands.

(5) The operator shall supply each handwashing sink with:

(a) a supply of hand cleaning liquid, powder, or bar soap; and

(b) individual, disposable towels and an associated waste receptacle;

(c) a continuous towel system that supplies the user with a clean towel;

(d) a heated air hand drying device; or

(e) a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperature.

(6) Near each handwashing sink in a conspicuous location, the operator shall place a sign or poster that notifies food truck employees to wash their hands.

(7) Food truck employees shall clean their hands in a handwashing sink and may not clean their hands in a sink used for food preparation or warewashing.

(8) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(a) be applied only to hands that are cleaned as specified in Subsection R392-102-14(4); and

(b) comply with the requirements of 2-301.16 of the FDA Food Code.

(c) Except as temporarily allowed by the health officer, the use of a hand antiseptic shall not replace the requirement for hand washing in Subsection R392-102-14(4).

(9) Food truck employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(10) Unless wearing intact gloves in good repair, a food truck employee may not wear fingernail polish or artificial fingernails when working with exposed food.

(11) Except for a plain ring such as a wedding band, food truck employees may not wear jewelry including medical information jewelry on their arms and hands.

(12) Food truck employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(13) Food truck employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(14) Food truck employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles

(15) A food truck employee may not use a utensil more than once to taste food that is to be sold or served.

(16) Toilet rooms shall:

(a) have a supply of toilet tissue available at each toilet;

(b) be conveniently located and accessible to employees during all hours of operation;

(c) be provided with a covered waste receptacle;

(d) be completely enclosed and provided with a tight-fitting door. Except during cleaning and maintenance operations, toilet room doors shall be kept closed.

R392-102-15. Supervision, Employee Health, and Contamination Events.

(1) The operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food truck during all hours of operation.

(2) Based on the risks inherent to the food truck operation, during inspections and upon request the person in charge shall demonstrate to the local health officer knowledge of foodborne disease prevention and the requirements of this rule. The person in charge shall demonstrate this knowledge by:

(a) Complying with the requirements of this rule;

(b) Being certified in food safety management according to the requirements of Rule R392-101; or

(c) Responding correctly to the inspector's questions as they relate to the specific food truck operations.

(3) The person in charge shall ensure that:

(a) Food truck operations are not conducted in a private home or in a room used as living or sleeping quarters;

(b) Persons unnecessary to the food truck operation are not allowed in the food truck;

(c) Employees and other persons entering the food truck comply with this rule;

(d) Employees are effectively cleaning their hands;
(e) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the proper temperatures, protected from contamination, unadulterated, and accurately presented, and are placing foods into appropriate storage locations
(f) Employees are properly cooking TCS food;
(g) Employees are using proper methods to rapidly cool TCS food;
(h) Consumers who order raw or partially cooked TCS food of animal origin are informed that the food is not cooked sufficiently to ensure its safety;
(i) Employees are properly sanitizing cleaned equipment and utensils;
(j) Employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils;
(k) Employees are properly trained in food safety, including food allergy awareness;
(l) Employees are informed in a verifiable manner of their responsibility to report, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under Subsection R392-102-15(4); and
(m) Written procedures and plans, where required in this rule or by the local health officer, are maintained and implemented as required.

(4) The operator, person in charge, and employees shall abide by Subpart 2-201 of the FDA Food Code in reporting of diseases, symptoms, and the exclusion or restriction of those working in the food truck.

(5) A food truck shall have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food truck. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

R392-102-16. Inspections, Corrective Actions, and Prevention of Foodborne Disease.

(1) All food trucks shall meet the requirements of this rule. Food trucks are exempt from the requirements of R392-100, Food Service Sanitation, unless otherwise stated in this rule.

(2) Upon presenting proper identification and providing notice of the intent to conduct an inspection, the operator shall allow the local health officer to determine if the food truck is in compliance with this rule by allowing access to the food truck, allowing inspection, and providing information and records specified in this rule during the food truck's hours of operation and other reasonable times.

(3) If an operator denies access to the local health officer, the local health officer shall:

(a) Inform the operator that:

(i) The operator is required to allow access to the local health officer as specified under Subsection R392-102-16(1),

(ii) Access is a condition of the acceptance and retention of a permit to operate as specified under Section R392-102-4, and

(iii) If access is denied, an order issued by an appropriate authority allowing access may be obtained; and

(b) Make a final request for access.

(c) If access continues to be refused, the local health officer shall provide details of the denial of access on an inspection report form.

(4) The local health officer shall document on an inspection report form:

(a) Administrative information about the food truck's legal identity, street and mailing addresses, permit tier designation as specified under Section R392-102-4, inspection date, and other information including the type of water supply, sewage disposal, status of the permit, and personnel certificates of food safety management and training; and

(b) Specific factual observations of noncompliant conditions or other deviations from this rule that require correction by the operator including:

(i) Failure of the operator to demonstrate the knowledge of foodborne illness prevention, and

(ii) Failure of employees and the operator to report a disease or medical condition; and

(c) Time frame for correction of violations.

(5) At the conclusion of the inspection the local health officer shall provide a copy of the completed inspection report and the notice to correct violations to the operator or to the person in charge, and request a signed acknowledgement of receipt.

(a) The local health officer shall inform a person who declines to sign an acknowledgement of receipt of inspectional findings that:

(i) An acknowledgment of receipt is not an agreement with findings;

(ii) Refusal to sign an acknowledgement of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames listed; and

(iii) A refusal to sign an acknowledgement of receipt is noted in the inspection report and conveyed to the historical record for the food truck.

(iv) The local health officer shall make a final request that the person in charge sign an acknowledgement of receipt of inspectional findings.

(6) The local health officer shall treat the inspection report as a public document and shall make it available for disclosure.

(7) An operator shall immediately discontinue operations and notify the local health department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.

(a) If operations are discontinued as required by the local health officer or in response to an imminent health hazard as specified in Subsection R392-102(16)(7), the operator shall obtain approval from the local health officer before resuming operations.

(8) A local health department issuing the primary permit may conduct one or more preoperational inspections to verify that the food truck is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with this rule.

(9)(a) A local health officer may periodically conduct operational onsite inspections of a food truck to determine continued compliance with this rule.

(b) For each year that a primary permit is issued to a food truck operator, the local health department that issued the permit shall conduct a minimum of one inspection of a food truck with a primary permit, regardless of tier designation as described in Subsection R392-102-4(5)(b).

(c) Any local health department that issues a secondary permit to a food truck operator may conduct a minimum of one onsite inspection prior to permit expiration.

(d) The local health department shall periodically inspect throughout its permit period a food truck operating only with a temporary food establishment permit that prepares, sells, or serves unpackaged time/temperature control for safety food and that has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, potable water supply, waste retention and disposal, and insect and rodent control.

(10) A local health officer may conduct follow-up inspections, as needed, to ensure the timely resolution of inspection findings.

(11) The local health officer shall make the operator aware of inspectional findings both during, and at the conclusion of, the inspection as well as strategies for achieving compliance. Repeat violations may prompt further compliance and enforcement actions.

KEY: food trucks, sanitation, food services, permits

Date of Enactment or Last Substantive Amendment: 2018

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(23); 26-15-2; 26-15-8(2)

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-4x
Policy Statement on Denial of Payment
to Medicaid Provider When Client Fails
to Keep Scheduled Appointment**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 42306

FILED: 11/07/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on its five-year review of this rule, the Department of Health will file a repeal because one provision no longer applies to Medicaid policy, and the other provision is already set forth in the Medicaid provider manual.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. The rule's policy statement on failed appointments no longer applies and provisions for fraudulent billing practices are spelled out in the Medicaid provider manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-4 and Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this rule repeal only updates and clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor administer the Medicaid program.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this rule repeal only updates and clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

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

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid member because this rule repeal only updates and 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 repeal 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 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**~~[R414-4x. Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment.~~****~~R414-4x-1.~~**

~~_____ This policy is developed in accordance with the Medicare Update Bulletin, January 1982 (82-01), and the Utah Medicaid Information Bulletin 83-20.~~

~~_____ Reimbursement shall not be made to a provider for service not actually furnished to a client because the client failed to keep a scheduled appointment.~~

~~_____ Billing for services not rendered is improper, and may constitute fraud. If a provider, physician or supplier of services does not render a specifically identifiable service to a client, there is no basis for submitting a bill for reimbursement for services rendered.~~

~~_____ Further information can be found in the Medicaid Provider Manual Section III.~~

KEY: ~~medicaid~~

~~Date of Enactment or Last Substantive Amendment: 1987~~

~~Notice of Continuation: November 15, 2012~~

~~Authorizing, and Implemented or Interpreted Law: 26-1-5]~~

Human Services, Administration, Administrative Services, Licensing

R501-7

Child Placing Adoption Agencies

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 42317

FILED: 11/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to H.B. 101 and S.B. 89 passed during the 2017 General Session, a change was needed to update the rules that govern child placing adoption agencies.

SUMMARY OF THE RULE OR CHANGE: Current legislation is requiring the Office of Licensing to set ethical standards for licensed agencies and update contents to pre-placement adoptive home studies. The mandated ethical standards touched many parts of the rule and therefore a full repeal and reenact was necessary. The new rule better represents current practices, standardizes requirements for agencies, and further clarifies processes for the benefit of licensees and licensors. The Office of Licensing created this rule over the period of seven months with the input and representation from the following groups: licensed adoption agencies, private adoption attorneys, the Division of Child and Family Services, adoptive parents, parent rights advocates, and birth parents.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment will not affect the state budget, as nothing in this rule will add to the staffing requirements or workload of current state employees.

◆ **LOCAL GOVERNMENTS:** This rule does not have any impact on local governments because it only governs Child Placing Adoption Agencies who are licensed under the Department of Human Services Office of Licensing. There are only 16 currently licensed Child Placing Adoption Agencies statewide.

◆ **SMALL BUSINESSES:** There are items in this rule that could potentially cause additional work for some adoption agencies, while others will remain relatively unaffected, however, costs are difficult to estimate. Please consider the following: The greatest impact to most agencies will be the requirement to review the adoption orientation form in-person with each birth parent. This process could take up to one hour per client to review. Because this form can be done by either higher paid social workers or unlicensed office workers, an estimated average of \$15/hour salary is a representation of an average estimated cost. The average number of private adoptions done in Utah over the past 3 years was 1,574, therefore, the estimated additional cost average across the 16 licensed agencies for this new process is \$1,475 per agency per year (or \$15 per adoption). Adoption agencies are free to identify and charge adoptive parents any fee they wish for their services and this rule requires transparency in itemizing and disclosing all required fees. Generally, Utah Child Placing Adoption Agencies charge anywhere from \$5,000 to \$40,000 per adoption according to Overson & Sheen, LLC. Agencies could potentially pass any new fees on to their clients with no fiscal impact on their business at all. The requirement for 20 hours of training could additionally represent a new requirement for some agencies and their staff. These are reasonable and comparable numbers of training requirements incurred in a Department of Human Services Licensed environment, for example domestic violence providers are required to provide 40 hours of training to their staff. The multidisciplinary work group indicated these training requirements should have already have been part of agency requirements regarding preparing staff to work with birth parents and/or adoptive families. Some agencies indicate that they are already doing this. There is flexibility in the implementation of training requirements, which is left to agency discretion on how they are conducted and received (online, prior formal education, classroom, reading, etc.). Depending on what the agency chooses to use for training materials, they could incur no cost, minimal cost, or significant cost. There is a new section of this rule that outlines file requirements for child files, birth parent files, and adoptive parents files, making them appear new, but they are simply separated out from the rest of the rule to clearly outline file content requirements in one section instead of distributed

throughout the rule. This should not add to the documentation requirements already in place with current rule. The multidisciplinary group felt that these overall requirements are all reasonable and necessary to create an ethical environment and not likely to impact most businesses in a significant way.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is possible that some agencies incurring costs may choose to pass any additional cost on to the paying adoptive parents. If this were to occur, it should be noted that this expense will represent a very small portion of the adoption expenses paid by the adoptive parents that generally ranges between \$5,000 and \$40,000. However, this rule could provide a benefit to both adoptive agencies and adoptive parents if it helps them avoid adoption appeals, lawsuits related to the adoptions and any occurrences of abuse, neglect, mistreatment, harm, exploitation, or fraud. The concept behind these additional requirements is that everyone involved will be more educated regarding the rights and responsibilities of all involved parties throughout all stages of the adoption process. This enhanced level of understanding could potentially lead to significant savings benefits as a contested adoption could run into the tens of thousands of dollars for all involved.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Office of Licensing requires that Child Placing Adoption Agencies transparently identify and disclose all potential costs that adoptive parents may incur through the adoption process. If compliance with this rule incurs a cost to agencies, they will outline it in their agency fee disclosure statement. This will ensure that there are no surprises regarding the costs adoptive parents are asked to pay. Furthermore, adoptive parents and birth parents will be able to make informed decisions as to whether or not they wish to voluntarily enter into any agreement with any particular agency after reading all fee disclosures and receiving orientation to adoption information (required of all agencies on a standardized form provided by the Office of Licensing).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be minimal fiscal impact to implement this rule, however in the long run, it could reflect a fiscal benefit to all affected parties due to more transparent and ethical processes and fewer contested adoptions.

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

HUMAN SERVICES
 ADMINISTRATION, ADMINISTRATIVE SERVICES,
 LICENSING
 195 N 1950 W 1ST FLR
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at jweinman@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
- ◆ Samantha Hanson by phone at 801-538-4041, or by Internet E-mail at samanthahanson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Ann Williamson, Executive Director

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$33,200	\$28,400	\$28,400
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$33,200	\$28,400	\$28,400
Total Fiscal Costs:	\$66,400	\$56,800	\$56,800
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$33,200	\$28,400	\$28,400
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$33,200	\$28,400	\$28,400
Net Fiscal Benefits:	\$33,200	\$28,400	\$28,400

This rule is not expected to have any impact on medium or large businesses because all of the adoption agencies in Utah are small businesses. The small business totals are estimated impact on all agencies; however some agencies will not be impacted since they are already implementing these practices. Agencies are also likely to pass their costs along to their clients.

R501. Human Services, Administration, Administrative Services, Licensing.

R501-7. Child Placing Adoption Agencies.

[R501-7-1. Authority and Purpose.

- ~~_____ A. This rule is authorized under Section 62A-2-106.~~
- ~~_____ B. This rule establishes standards for licensing agencies to provide child placing adoption services.~~

R501-7-2. Definitions.

- ~~_____ A. "Adoption" is defined in Section 78B-6-103.~~
- ~~_____ B. "Child placing adoption agency" means an individual, agency, firm, corporation, association or group children's home that engages in child placing.~~
- ~~_____ C. "Adoption Services" means evaluating, advising, or counseling children, birth parents or adoptive families, placing children for adoption; monitoring or supervising placements until the adoption is finalized; conducting adoption studies or preparing adoption reports; or arranging for foster care.~~
- ~~_____ D. "Birth Parent" is defined in Section 78B-6-103.~~
- ~~_____ E. "Child placing" means receiving, accepting, or providing custody or care for a child for the purpose of finding a person to adopt the child or placing a child in a home for adoption.~~
- ~~_____ F. "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth.~~
- ~~_____ G. "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.~~
- ~~_____ H. "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.~~
- ~~_____ I. "Genetic and Social History" is defined in Section 78B-6-103.~~
- ~~_____ J. "Health History" is defined in Section 78B-6-103.~~
- ~~_____ K. "Intercountry Adoption" means the adoption of a child from a foreign country, whether the adoption is completed in the child's native country or in this State.~~
- ~~_____ L. "Legal risk placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.~~
- ~~_____ M. "Mental Health Therapist" is defined in Section 58-60-102.~~
- ~~_____ N. "Sliding Scale" means an established fee schedule that varies according to an individual's annual income.~~
- ~~_____ O. "Special needs" is defined in Section 62a-4a-902(2).~~
- ~~_____ P. "Unmarried biological father" is defined in Section 78B-6-103(17).~~

R501-7-3. Legal Requirements.

- ~~_____ A. In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-~~

~~2-5, R501-2-8 through R501-2-14, R501-14; Title 58, Chapter 60; title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6 and 78B-13; and other applicable local, State and Federal laws.~~

~~_____ B. Child placing adoption agencies that do not provide housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.~~

~~_____ C. A child placing adoption agency shall not:~~

~~_____ a. delay or deny the placement of a child or the opportunity to become an adoptive parent on the basis of race, color, ethnicity, cultural heritage, or national origin. A child placing adoption agency shall comply with all State and Federal laws regarding discrimination.~~

~~_____ D. A child placing adoption agency shall be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction places legal responsibility with another party, in accordance with Section 78B-6-134.~~

~~_____ E. A child placing adoption agency which serves Indian children shall comply with the Indian Child Welfare Act.~~

~~_____ F. A child placing adoption agency that provides foster care shall comply with R501-12.~~

~~_____ H. A child placing adoption agency shall comply with the Interstate Compact for Placement of Children, in accordance with Section 62A-4a-701 et seq.~~

~~_____ I. A child placing adoption agency shall ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.~~

R501-7-4. Administrative Requirements.

~~_____ A. A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.~~

~~_____ 1. Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time, paid, professional experience in a licensed child placing adoption agency.~~

~~_____ 2. A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.~~

~~_____ 3. An Executive Director who is licensed in this state as a mental health therapist, complies with the Utah Mental Health Professional Practice Act, and has at least one year of full time, paid, professional experience in a licensed child placing agency may serve as a social work supervisor, but may not supervise more than four staff and volunteers who provide adoption services to clients.~~

~~_____ B. Individuals who provide adoption services to birth parents, children, or adoptive applicants shall maintain a current professional license as required by the Utah Mental Health Professional Practice Act and shall comply with the Utah Mental Health Professional Practice Act.~~

~~_____ C. A child placing adoption agency shall notify the Office Of Licensing of any changes it makes to its policies or procedures and shall provide a written copy of any changes no later than five business days after the change.~~

~~_____ D. A child placing adoption agency shall provide at least 30 days' prior written notice to the Office of Licensing that the agency is:~~

- ~~_____ 1. dissolving or ceasing to provide child placing services;~~
- ~~_____ 2. adding or eliminating in-state, out-of-state, special needs, or international services; or~~
- ~~_____ 3. changing ownership or name.~~

R501-7-5. Ethical Conduct.

- ~~_____ A. A child placing adoption agency shall:~~
- ~~_____ 1. not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;~~
 - ~~_____ 2. not provide or accept any payment or other considerations for any referral;~~
 - ~~_____ 3. work only with agencies, entities or individuals that are authorized to provide child placing adoption services by the laws of this state or the jurisdiction in which that agency, entity or individual performs child placing adoption services;~~
 - ~~_____ 4. not permit its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the birth parents and the adoptive parents unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;~~
 - ~~_____ 5. not require its clients to use or pay for specified attorneys or other service providers, shall inform clients that they are free to select independent attorneys and other service providers, and shall not charge clients fees for services that clients obtain independently;~~
 - ~~_____ 6. not refer or steer any individual to any private practice in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing any potential conflicts of interest and informing said individuals that they are free to select independent service providers; and~~
 - ~~_____ 7. not misrepresent or withhold any facts or information relating to its services, any individual, or the applicable law.~~
- ~~_____ B. The members of the governing body of a child placing adoption agency shall disclose, in writing, to the chairperson of the governing body, any direct or indirect financial interest in the agency.~~
- ~~_____ C. The child placing adoption agency, its board members, volunteers, employees, or agents shall not solicit donations from an adoptive family that is under consideration for placement of a child. A generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule.~~
- ~~_____ D. The child placing adoption agency, its board members, volunteers, employees, or agents shall not accept donations from an adoptive family that is under consideration for placement of a child.~~

R501-7-6. Fees.

- ~~_____ A. A child placing adoption agency shall provide a written disclosure of all fees and expenses prospective adoptive parents may incur before the agency accepts any payments or processes any application from, or enters any agreement with, the prospective adoptive parents:~~
- ~~_____ 1. The disclosure shall identify the services associated with each fee, and specify both the average cost for that service for the preceding two fiscal years, and the maximum fee that may be charged for each service.~~
 - ~~_____ 2. A child placing adoption agency shall not charge adoptive parents for any fees or expenses that exceed or were not included in the written disclosure.~~
 - ~~_____ 3. A child placing adoption agency shall identify which fees may be non-refundable.~~
- ~~_____ B. A child placing adoption agency may charge adoptive parents an agency fee, which shall include all administrative and professional services provided on behalf of the adoptive parents,~~

~~including but not limited to pre-adoption evaluations, home studies, personnel, counseling, overhead, and training.~~

~~_____ C. A child placing adoption agency may charge adoptive parents for the actual and reasonable costs of maternity, medical, and necessary pre-natal living expenses of the birth mother in accordance with Section 76-7-203.~~

~~_____ 1. The agency shall retain receipts documenting the actual costs of goods and services provided which exceed twenty-five dollars.~~

~~_____ 2. A child placing adoption agency shall not charge adoptive parents for the travel expenses of any person other than the birth mother.~~

~~_____ 3. A child placing adoption agency shall not charge the adoptive parents for the living expenses of any person other than the birth parents.~~

~~_____ 4. A child placing adoption agency shall not charge the adoptive parents for the birth parents' post-confinement living expenses.~~

~~_____ D. The agency shall maintain an itemized accounting of the actual expenditures made on behalf of a birth mother. The accounting shall be verified and signed by the agency and adoptive parents, and filed with the court and the Office of Licensing in accordance with Section 78B-6-140.~~

~~_____ 1. The agency shall utilize an affidavit form provided by the Office of Licensing or a substantially similar form including the same information.~~

~~_____ 2. The agency shall require the birth mother to verify that she received all of the itemized goods and services by signing a file copy of the accounting.~~

~~_____ E. The agency may delegate the responsibility for a child's care, maintenance, and support to the adoptive applicant only when the applicant has received the child into the applicant's home, in accordance with Section 78B-6-134.~~

~~_____ F. A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parents or the child placing adoption agency during her pregnancy unless she is first convicted of fraud.~~

R501-7-7. Documentation.

~~_____ A. A child placing adoption agency shall maintain a policy and procedure manual describing how it shall comply with all licensing rules and local, state and federal laws applicable to the type of services offered.~~

~~_____ B. A child placing adoption agency shall maintain a policy and procedure manual demonstrating how it shall:~~

- ~~_____ 1. train and supervise employees and volunteers;~~
- ~~_____ 2. identify a child who may be available for adoption;~~
- ~~_____ 3. identify or refer a person who is considering relinquishing a child for adoption;~~

~~_____ 4. custody services in cases where the agency does not obtain legal custody of a child;~~

~~_____ 5. verify the credentials of other individuals and agencies it works with to obtain relinquishments and place a child;~~

~~_____ 6. offer counseling services by a licensed mental health therapist to a person who is considering relinquishing a child for adoption or adopting a child;~~

~~_____ 7. inform birth parents and adoptive parents of their rights and responsibilities in writing;~~

8. monitor who has legal and physical responsibility for the child at all times;

9. secure the necessary relinquishments and facilitate the termination of parental rights;

10. recruit and assist adoptive families to meet the needs of available children, including but not limited to special needs children;

11. obtain a background study on a child or a home study on a prospective adoptive parent;

12. evaluate prospective adoptive parents;

13. process appeals of home study denials;

14. assess the best interests of a child and the appropriate adoptive placement for the child;

15. monitor a case post-placement until the adoption is final;

16. ensure the child is receiving all necessary services prior to finalization of adoption;

17. assume custody and provide any needed services for the child when necessary because of disruption;

18. arrange to provide foster care prior to placing the child in an adoptive home;

19. preserve the confidentiality of client files;

20. respond to requests for information from birth families, adoptees, adoptive families, and others;

21. preserve client records when a case is closed and in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

22. enable record retrieval by individuals with a right to access them.

C. A child placing adoption agency shall provide documentation demonstrating its compliance with each subsection in R501-7-7(B):

D. A child placing adoption agency shall maintain a case file for the birth parents, and the prospective adoptive parents, and for each child who is more than 90 days old at the time of placement or who has been in the legal custody of someone other than the birth mother. Each case file shall cross-reference related files. Each case file shall include:

1. application for service;
2. all studies and evaluations, whether or not finalized, including but not limited to those required by Section 78B-6-128;
3. needs assessment;
4. case notes describing services provided;
5. the individual's adjustments, interactions and relationships;
6. original or certified copies of government and religious birth records;
7. original or certified copies of relinquishment or transfer of birth mother's and birth father's rights;
8. original or certified copies of decree of termination of birth mother's and birth father's rights;
9. certified copies of marriage certificates, divorce papers, custody and visitation orders, if any;
10. certified copies of death certificates, if any, of birth parents;
11. original or certified copy of affidavit that birth mother's husband is not the child's father, if applicable;
12. waiver of confidentiality or release of information authorization, if applicable;

13. statements of birth and adoptive parents regarding any agreements to exchange information or maintain contact;

14. current and historical physical, psychological, genetic and developmental health information;

15. original or certified copy of the order of adoption; and

16. in the event that any records identified in this rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

E. A child placing adoption agency shall maintain current health, fire, zoning, business, and other permits, certificates, or licenses at each facility it operates, as required by state or local law;

F. All case files shall be retained for a minimum of 100 years from the date the case is closed.

G. All adoption records shall be confidential and shall be maintained in a locked file when not in active use. Adoption records shall be accessible only by authorized agency employees. No information shall be shared with any person without the appropriate consent forms, except as required by law.

H. A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received, services provided, the number of children, birth parents, and adoptive parents served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-8. Services for Birth Parents.

A. Child placing adoption agencies shall offer counseling sessions prior to consent or relinquishment. Prior to consent or relinquishment, the agency shall inform birth parents that:

1. their decision to sign the consent or relinquishment must be voluntary; and
2. their decision is permanent and may not be revoked after the consent or relinquishment is signed.

B. Birth parents shall be provided complete and accurate information and their decision to consent or relinquish, or not to consent or relinquish their child shall be supported:

1. Child placing adoption agencies shall not induce or persuade a birth parent to consent to adoption or to relinquish a child through duress, undue influence, misrepresentation, or deception.

C. A child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125.

D. Birth parents shall be assisted in considering whether they want to disclose their identity to the adoptee or the adoptive family, or hear about or from the child, directly or indirectly, in the future.

E. Birth parents shall be offered non-identifying information on the potential adoptive parents, such as age, physical characteristics, educational achievement, family members, profession, nationality, health, and reason for adopting.

F. A child placing adoption agency shall inform birth parents that a detailed, non-identifying health history and a genetic and social history of the child shall be provided to the adoptive parents in accordance with Section 78B-6-143, and shall inform birth parents of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

G. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with birth

parents and shall also be clearly stated in writing on the birth parents' application for services forms.

H. A child who has already established some identification with a particular religious faith shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

I. A child placing adoption agency shall initiate proceedings to terminate or determine parental rights when required by Utah law.

J. Child placing adoption agencies that provide housing for expectant birth mothers shall assure that such housing complies with the following minimum standards:

1. housing is in compliance with health, fire, zoning, and other applicable laws and regulations;
2. housing is clean, well-maintained and adequately furnished;
3. birth mothers shall have private bedrooms;
4. laundry equipment and supplies shall be available; and
5. adequate nutritious food, or resources to obtain food, is available.

K. Child placing adoption agencies that provide or pay for birth mothers' transportation to the State of Utah shall also ensure that the birth mothers' return transportation to their home state is provided, regardless of whether the birth mother decides to relinquish parental rights.

L. The placement decision shall be in writing, signed by the child placing adoption agency and the birth parents, and a copy shall be maintained in the case record of the birth parents, the adoptive parents, and the child.

R501-7-9. Services for Children.

A. After the birth parents determine that adoption is the best plan for their child, an assessment shall be made within 30 days, or within the timeframe ordered by the court, to obtain information to assist in the placement process.

B. A determination shall be made regarding what kind of adoptive family should be selected for the child. The selection of the adoptive family for a specific child shall be based on the family's ability to meet the individual needs of the child. The wishes of the birth parents, the adoptive parents, and when applicable, the child, shall be considered.

C. The assessment shall be used to assist prospective adoptive families to make their decision about the child and birth family.

D. A complete developmental history of the child shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, nurses, psychologists, and other consultants shall be included. The developmental history shall include:

1. birth and health history, and all evaluations;
2. descriptions of fine and gross motor skills, social, emotional, and cognitive development;
3. the child's adaptation to previous living experiences and situations;
4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, description of the child's behavior and separation experiences;

5. a description of the child's cultural and ethnic background;

6. the child's language skills, educational records, talents and interests.

E. A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents, potential adoptive parents, and the assigned agency caseworker prior to placement:

1. evaluation of the child that includes a correlation and interpretation of all available information, including but not limited to genetic and laboratory test results;
2. the medical care and immunizations received to date;
3. the nature and degree of any disability;
4. treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care.

F. Psychological testing for children should be used selectively and as a tool for observation and diagnosis.

G. A child placing adoption agency shall obtain information about the birth parents and their family backgrounds to:

1. provide the adoptive family with the birth family's medical, genetic, social, and mental health history;
2. provide the adoptive family with information about the talents, interests, and education of the birth parents;
3. provide the adoptive family with non-identifying information about other children born to either of the birth parents; and
4. identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family.

H. An interdisciplinary approach based upon the needs of the child is to be used in the selection of a placement either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee. A child placing adoption agency shall attempt to place siblings together.

I. A child shall be placed with the adoptive family at the earliest time possible after being freed for adoption.

J. A child's needs shall be assessed and a written plan shall be developed to ensure that the adoptive parents are prepared to meet the child's needs and necessary services are provided.

K. A child awaiting placement with an adoptive family shall be placed in a licensed foster or residential home or facility.

1. A child placing adoption agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

2. A child awaiting adoptive placement shall be placed in a licensed group or residential treatment program when the child's needs can be met only in such a setting.

3. A child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

L. A child placing adoption agency shall have an individualized written adoptive placement plan for each child, which shall include:

1. providing the family and child services or service referrals after the adoption is finalized; and
2. the financial and social service responsibilities of each agency and individual.

~~M. A social worker shall supervise the child's placement until finalization of the adoption to assist with the transition and assist the family in obtaining any needed services.~~

~~1. A minimum of one supervisory visit shall be made prior to finalization of the adoption.~~

~~N. A child placing adoption agency having a child available for adoption who has not been placed within 60 days after relinquishment or after being determined to be available for adoption by the court shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges.~~

~~O. The needs of the child shall determine the amount of time taken to prepare the child for placement. The child shall be counseled regarding the adoptive placement and shall be protected from emotional disturbances associated with sudden separation from a known situation.~~

~~P. A child placing adoption agency shall develop a written plan with the child's current caregivers, the adoptive parents, and the child, to facilitate the child's transition into the adoptive family. The child's stated preferences shall be considered and if possible, honored.~~

R501-7-10. Services to Adoptive Parents.

~~A. Child placing adoption agencies shall provide prospective adoptive parents with a written description of their services, policies and procedures.~~

~~B. A child placing adoption agency shall explain the adoption process and the birth parents' rights, including the status of the putative father, to the prospective adoptive parents.~~

~~C. A child placing adoption agency shall provide all available non-identifying information on children who may be available for adoptive placement and their birth families, including but not limited to physical descriptions, special abilities, developmental and behavioral history, personality and temperament, medical and genetic history, ethnic and cultural background, and prior placement history.~~

~~D. A child placing adoption agency shall inform prospective adoptive parents of the availability of non-identifying health, genetic and social histories in accordance with Section 78B-6-143, and Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.~~

~~E. A child placing adoption agency shall provide individual or group counseling to help the prospective adoptive parents evaluate and develop their capacities to meet the ongoing needs of the child.~~

~~F. A child placing adoption agency shall review all available information about the birth parents and child with the prospective adoptive parents and encourage the selection of a child whose needs the adoptive parents will be able to meet.~~

~~G. A child placing adoption agency shall prepare the child and adoptive family for the placement of the child in the home.~~

~~H. A child placing adoption agency shall inform each prospective adoptive parent that information about individual children in the custody of the state who are available for adoption may be obtained by contacting the Division of Child and Family Services or its internet site and shall provide a pamphlet prepared by the Division of Child and Family Services regarding adoption of children in the State's custody. The agency shall inform each prospective adoptive parent that assistance may be available when adopting children in the custody of the state, including:~~

~~1. Medicaid coverage for medical, dental, and mental health services;~~

~~2. tax benefits, adoption subsidies, or other financial assistance to defray the costs of adoption; and~~

~~3. training and ongoing support for the adoptive parents.~~

~~I. A child placing adoption agency shall inform adoptive parents when a child may be eligible for an adoption subsidy or benefit, including but not limited to SSI, and shall coordinate with Division of Child and Family Services to apply for the subsidy or benefit.~~

~~J. A child placing adoption agency shall have written procedures and standards for the evaluation and approval or denial of applications from prospective adoptive parents.~~

~~K. The home study shall include:~~

~~1. interviews with the adoptive applicants, their children, and other individuals living in the home;~~

~~2. criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78B-6-128;~~

~~3. written statements from references identified by the applicants. The applicants shall supply names of at least two non-related and one related individuals who shall provide information directly to the agency regarding the applicant's qualifications for parenting an adoptive child;~~

~~4. a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within six months prior to the date of the application; and~~

~~5. inspections of the home, to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.~~

~~L. The adoptive applicants shall be informed, in writing, and within five business days after the decision is made, as to the acceptance or the reasons for the denial of their home study. The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, and the right to request an additional evaluation, upon order of the court in accordance with Section 78B-6-128.~~

~~M. A child placing adoption agency shall select applicants who:~~

~~1. are able to provide the continuity of a caring relationship;~~

~~2. are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and~~

~~3. understand the needs of a child at various developmental stages.~~

~~N. A child placing adoption agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parents. This disclosure shall also be clearly stated in writing on the adoptive parents' application for services forms.~~

~~O. A child placing adoption agency shall verify that an applicant's income is sufficient to provide for a child's needs.~~

~~P. A child placing adoption agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.~~

~~Q. A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parents have first given~~

their written consent, indicating that they have been fully informed of the specific risks involved.

~~R. Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.~~

~~S. A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, including but not limited to:~~

- ~~1. providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups;~~
- ~~2. monitoring the child's adjustment and development;~~
- ~~3. assisting the family in helping the child, friends, family members, extended family members, neighbors, schools, and others understand the adoption process; and~~
- ~~4. assisting the family in understanding their feelings, understanding the child, and adjusting to the family composition.~~

~~T. The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems:~~

~~1. The first contact after placement shall take place within two weeks of placement.~~

~~2. A minimum of one face-to-face supervisory home visit shall take place before finalization.~~

~~U. A child placing adoption agency shall provide assistance in finalizing the adoption, unless the agency removes the child due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parents; the separation or divorce of the adoptive parents; the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child:~~

~~1. If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parents shall be entitled to appeal the removal decision. The agency shall provide the adoptive parents written notice of their right to appeal and the procedure for appeal:~~

~~R501-7-11. Intercountry Adoptions:~~

~~A. In addition to complying with all other rules regarding adoption, a child placing adoption agency that provides inter-country adoption services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and shall document that:~~

- ~~1. the child is legally freed for adoption in the country of origin;~~
- ~~2. information was provided to the adopting parents about naturalization proceedings.~~

~~B. A child placing adoption agency that provides intercountry adoption services shall:~~

~~1. establish an official and recorded method of fund transfers to avoid, when possible, the use of direct cash transactions to pay for adoption services in other countries;~~

~~2. identify, in writing and in advance of accepting any payment or signing any agreement, the total cost of providing adoption~~

~~services in the child's country, including but not limited to the cost of care for the child, personnel, overhead, training, communication, obtaining any necessary documents, translation, the child's passport, notarizations and certifications, with disclosure of whether the prospective adoptive parents shall pay such costs directly in the child's country or indirectly through the child placing adoption agency;~~

~~3. itemize the costs, if any, of mandatory payments to child protection or child welfare programs in the child's country of origin, including but not limited to a description of:~~

- ~~a. a fixed contribution amount identified in advance and in writing to the prospective adoptive parents;~~
- ~~b. the intended use of the payment; and~~
- ~~c. the manner in which the transaction will be recorded and accounted for;~~

~~4. provide all applicants with written policies governing refunds:~~

~~C. A child placing adoption agency that provides intercountry adoption services shall notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program.~~

~~D. A child placing adoption agency that provides intercountry adoption services shall verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries.]~~

~~R501-7-1. Authority and Purpose.~~

~~(1) This rule is authorized under Section 62A-2-106.~~

~~(2) This rule establishes standards for licensing agencies to provide child placing adoption services.~~

~~R501-7-2. Definitions.~~

~~(1) "Adoption" is defined in Section 78B-6-103.~~

~~(2) "Adoptive Parent" also means potential adoptive parent(s).~~

~~(3) "Child Placing" is defined in 62A-2-101.~~

~~(4) "Child Placing Adoption Agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing for the purpose of finding a person to adopt a child or placing a child in a home for adoption.~~

~~(5) "Adoption Related Expenses" are defined in 76-7-203.~~

~~(6) "Adoption Services" is defined in 62A-4a-101(2).~~

~~(7) "Adoption Related Counseling" includes clinical counseling and psycho educational counseling that is specific to adoption and includes the counseling provided to pre-existing parent(s) as required by circumstances and 78B-6-119.~~

~~(8) "Agency" means a child placing adoption agency.~~

~~(9) "Allowable Adoptive Parent Information" is the information shared with birth parents regarding the adoptive parent(s). It may include:~~

- ~~(a) non-identifying information as follows:~~
- ~~(b) demographics, such as age, nationality, religious affiliation;~~

~~(c) health status;~~

~~(d) physical characteristics;~~

~~(e) educational achievement and profession;~~

~~(f) family characteristics, including marital history and length, sexual orientation, and any other children;~~

~~(g) support system;~~

~~(h) discipline preferences;~~

~~(i) reason for adopting;~~

(j) non-identifying information transparently disclosed by the Agency in advance; and

(k) any other identifying or non-identifying information agreed upon via a signed release of information by the birth parent.

(10) "Allowable Child/Pre-existing Parent Information" is the information shared with adoptive parent(s). It includes:

(a) Genetic and Social History defined 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 76B-6-103 inclusive of:

(i) birth family's medical, genetic, social, and mental health history;

(ii) information pertaining to changes in caregivers; and

(iii) a description of the child's race, cultural and ethnic background.

(b) Health History as defined 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 76B-6-103 inclusive of:

(i) Pre-natal, labor and delivery records for mother and infant;

(ii) medical records including the child's physical health, immunizations, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems; and

(iii) non-identifying information transparently disclosed by the Agency in advance.

(c) Any other identifying or non-identifying information agreed upon via a signed release of information by the birth parent.

(11) "Client" a client of a child placing adoption agency is a pre-existing parent(s), adoptive parent(s) who have consented to, or been ordered by the court to receive adoption services and child(ren) placed or to be placed. For purposes of background screening in accordance with 62A-2-101 only, the adoptive parent(s) are also defined as "Associated with the Licensee".

(12) "Confinement" means the time period when a woman is hospitalized or medically restricted due to her pregnancy and childbirth. Individualized medical documentation is required to justify any confinement period longer than 6 weeks.

(13) "Directly Affected Person" is defined in 76-7-203.

(14) "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

(15) "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

(16) "Genetic and Social History" is defined in Section 78B-6-103.

(17) "Health History" is defined in Section 78B-6-103.

(18) "High Needs Child" is as defined in 62A-4a-601.

(19) "Suffered from Prenatal Exposure" under this definition of high needs child means a child that has been exposed to or is dependent upon harmful substances as a result of the mother's use of illegal substances or abuse of prescribed medications during pregnancy, or there is reason to believe a child has or is at risk to develop a fetal alcohol spectrum disorder.

(20) "Home Study" is equivalent to a pre-placement adoptive evaluation as outlined in 78B-6-128 and is the written assessment of an applicant's ability to be considered for adoptive placement.

(21) "Infant" for purposes of adoption means a child up to six months in age at placement.

(22) "Intercountry Adoption" is when an individual or couple becomes the legal and permanent parents of a child who is a national of another country and is governed by the laws of both countries.

(23) "Legal Risk Placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

(24) "Match" means the identification of a specific potential adoptive child with a specific potential adoptive family.

(25) "Mental Health Therapist" is defined in Section 58-60-102.

(26) "Office" means the DHS Office of Licensing.

(27) "Pre-existing Parent" is defined in 78B-6-103.

(28) "Special Needs Child" means there is known evidence that:

(a) the child is 5 years of age or older;

(b) the child is under the age of 18 with a physical, emotional or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(29) "Unmarried Biological Father" is defined in Section 78B-6-103(17).

R501-7-3. Legal Requirements.

(1) In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-1, R501-2-1 through 501-2-5, R501-2-8 through R501-2-14, R501-14; , Title 58, Chapter 60, title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6 and 78B-13; and all other applicable local, State and Federal laws.

(2) Child placing adoption agencies that do not arrange housing for birth mothers are exempt from R501-2-5, 10, 11, and 12.

(3) A child placing adoption agency shall:

(a) be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction or applicable law places legal responsibility with another party, in accordance with Section 78B-6-134;

(b) comply with the Indian Child Welfare Act;

(c) obtain a child placing foster license and comply with R501-12 if providing foster care;

(d) obtain a residential support license and comply with R501-22 if providing residential support services to pre-existing parent(s);

(e) comply with the Interstate Compact on the Placement of Children, in accordance with Section 62A-4a-701 et seq; and

(f) ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.

(4) The Division of Child and Family Services shall additionally comply with R512-40 for recruitment, home study and approval; R512-41 for qualifying and adoptive family and adoptive placement; R512-302 for responsibilities pertaining to out of home caregivers and any other section of 62A-4a and R512 that governs the provision of adoptive services to child welfare clients served by the Division of Child and Family Services.

(a) The aforementioned child welfare statute and rule shall supersede this rule when in conflict for child welfare clients served by the Division of Child and Family Services.

R501-7-4. Administrative Ethics and Responsibilities.

(1) Child placing adoption agencies shall:

(a) identify and strictly adhere to accurate accounting practices, including all fee requirements of this rule;

(b) always act in the best interest of a child;

(i) best interest determinations are made by considering a number of factors related to the child's circumstances including age and developmental needs and the parent or caregiver's circumstances and capacity to parent the child to adulthood and shall consider the pre-existing parent(s)' wishes when parental rights are voluntarily relinquished;

(c) provide services and adhere to ethical practices that support and comply with all client rights and responsibilities;

(d) develop and comply with processes that are free from fraud, duress or undue influence and avoid and mitigate conflicts of interest in order to preserve the protections of clients to include:

(i) not giving preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

(ii) not accepting or soliciting donations from an adoptive family that is under consideration for placement of a child or pending finalization of an adoption;

(A) a generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule;

(iii) not coercing or incentivizing pre-existing parent(s) to make a plan of adoption or to relinquish their parental rights;

(iv) not permitting its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the pre-existing parent(s) and the adoptive parent(s) unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

(v) inform clients that they are free to select independent attorneys and other service providers;

(A) client bears the responsibility to select a competent provider and their choice may affect costs incurred;

(vi) not referring any individual to services in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing potential conflicts of interest and informing said individuals that they are free to select independent adoption service providers; and

(vii) require members of the governing body to disclose, in writing, to the chairperson of the governing body and the Office of Licensing, any direct or indirect financial interest in the agency;

(e) manage and share information while still preserving confidentiality when required. This includes:

(i) documenting information shared with potential adoptive parent(s) regarding unknown pre-existing parent(s), Indian Child Welfare Act, and any known information that could potentially disrupt an adoptive placement;

(ii) respond to requests for information from clients and former clients within 30 days and document all requests for information or actual sharing of information to/from birth families, adoptees, adoptive families, and others;

(iii) provide non-identifying information in client files that can allowably be shared, and shall comply with previous releases and established policies;

(iv) the agency shall refer clients to the Mutual-Consent Voluntary Adoption Registry through Department of Health Vital Records if adult adoptees or birth family members want to reunite; and

(v) in more urgent circumstances that could have serious implication to any client or prior client, the agency will utilize prior contact and emergency contact information, as well as engage in simple social media and search engine inquiries to locate and communicate with former clients;

(vi) agencies may engage in a fee based more extensive service to search if desired;

(vii) the agency may share information with third party search providers only if consent has been given by the affected party;

(viii) not misrepresent or withhold any facts or allowable adoptive parent(s) or child/pre-existing parent(s) information relating to its services, involved individuals, or the applicable law;

(f) accept and utilize third party assessments, evaluations, references, home studies or pre-placement evaluations only if received directly from the document's author;

(g) preserve the confidentiality and content of client files;

(h) with respect to adoption services an agency shall refer to or utilize only agencies, entities or individuals that are authorized to provide the service by the laws of this state or the jurisdiction in which that agency, entity or individual performs the service;

(i) provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

(i) dissolving or ceasing to provide child placing services; or

(ii) significant changes in adoption services provided, such as adding or eliminating international adoption.

(2) In addition to policy and procedure requirements outlined in R501-2, agencies shall develop and adhere to the following adoption-related policies and procedures:

(a) a process regarding how to transfer a relinquishment to another agency in compliance with 78B-6-124 (7);

(b) a process to identify a high needs child as defined in 62A-4a-601, and once identified comply with 62A-4a-609 including disclosure and training to adoptive parent(s);

(c) a process for the temporary placement of children awaiting adoptive placement for over 30-days;

(d) a process and standards for the evaluation and approval or denial of an adoptive home study or pre-placement evaluation;

(e) process and standards for the evaluation and approval or denial of applications from prospective adoptive parent(s);

(f) a written plan for contact, file maintenance, and record retrieval in the event that the agency ceases to provide child placement adoption services;

(i) this plan may involve a secondary entity;

(g) a process for identifying the pre-existing parent(s)' utilization of alternative payment sources including any public assistance that may defray adoptive parent(s) costs;

(h) policy identifying what is allowable child/pre-existing parent(s) information to be shared with potential adoptive parent(s), including the development of releases of information as needed;

(i) policy identifying what is allowable adoptive parent(s) information to be shared with pre-existing parent(s) including the development of releases of information as needed;

_____ (j) process for refunds to include refunding over-paid fixed costs for birth parent expenses and/or the utilization of over-paid estimated costs toward other birth parent expenses; and

_____ (k) written policy to be provided to the adoptive parent(s) outlining how the match is determined, its relationship to any fees, and how it is managed by the agency.

R501-7-5. Staffing Requirements.

_____ (1) A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

_____ (2) If an Executive Director is serving as a social work supervisor, they shall not supervise more than four staff and volunteers who provide adoption services to clients.

_____ (3) Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time paid professional experience in a licensed child placing adoption agency.

_____ (4) A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

_____ (5) An executive director shall have at least one year of full time paid experience in a licensed child placing adoption agency.

_____ (6) All staff that provide direct client services shall be trained a minimum of 20 hours of pre-service training, prior to independently providing direct client services, and 12 hours annual in-service training.

_____ (a) Training content shall include:

_____ (i) agency policy and procedures;

_____ (ii) adoption ethics, laws, and rules;

_____ (iii) the provision of professional and trauma informed adoption practices; and

_____ (iv) any evaluations they will be performing.

_____ (b) Staff will be supervised for adherence to training topics.

R501-7-6. Fees and Disclosures.

_____ (1) A child placing adoption agency may charge adoptive parent(s) agency fees which includes administrative and professional services provided on behalf of the adoptive parent(s), including but not limited to:

_____ (a) agency overhead;

_____ (b) personnel;

_____ (c) background screenings for adoptive parent(s) and staff;

_____ (d) training;

_____ (e) insurance;

_____ (f) legal services for the agency;

_____ (g) advertising/recruiting;

_____ (h) post-placement visit;

_____ (i) agency staff support throughout pregnancy, birth, placement and post placement;

_____ (j) home studies, if completed by the agency; and

_____ (k) home study updates, if completed by the agency.

_____ (2) An agency fee must be itemized to clarify what is included or specifically excluded.

_____ (3) Any fee billed inclusive of an agency fee shall not be billed additionally outside of that agency fee.

_____ (4) An agency may charge and accept payment from the prospective adoptive parent(s) only for reasonable, and actual outstanding adoption related expenses of the pre-existing parent(s).

_____ which are itemized outside of any agency fee for service and limited to the following:

_____ (a) additional counseling;

_____ (b) adoption related legal fees to utilize an independent attorney for the adoption;

_____ (c) maternity expenses limited to pregnancy related clothing, pre-natal vitamins, other non-medical pregnancy related needs;

_____ (d) medical and hospital expenses limited to pregnancy and childbirth related medical expenses for the mother/child; and

_____ (e) temporary living expenses limited to the duration of the pregnancy and confinement of the pre-existing parent(s) or directly affected person and include only:

_____ (i) food;

_____ (ii) transportation including bus passes, gasoline, car maintenance, car payments, and taxi/ride share services;

_____ (iii) housing;

_____ (iv) utilities and telephone;

_____ (v) reasonable and minimal incidentals;

_____ (vi) sufficient apparel for the weather and circumstances;

_____ (vii) daily living household supplies;

_____ (viii) travel between the mother's or father's home and the location where the child will be born or placed;

_____ (f) any other expense not explicitly outlined in this rule shall not be charged or paid without providing written agreement and justification approved by the prospective adoptive parent(s), and either the Office of Licensing or the Court.

_____ (5) An agency may charge an adoptive or potential adoptive parent(s) for either the actual adoption related expenses in regard to the pre-existing parent(s) and directly affected individuals or a fixed amount estimate of adoption related expenses.

_____ (a) the agency must disclose whether their adoption related expenses charged are actual or estimated and share the agency policy on refunds or re-appropriation prior to charging adoptive parent(s).

_____ (b) If the agency charges the actual adoption expenses they must still be capped at the maximum amount outlined in the disclosure. Any over-collected actual expenses must be reimbursed.

_____ (c) If the agency charges a fixed amount for adoption related expenses, it must be outlined in the disclosure and capped at that amount. It shall be disclosed whether or not the flat adoption related expenses are or are not refundable in the disclosure.

_____ (d) over collection of adoption related expenses that are not refunded is only permissible with estimated adoption related expenses if:

_____ (i) any overage will be used to support the adoption related expenses of another adoption;

_____ (ii) adoptive parent(s) are informed in advance that their payments could contribute to the support of other pre-existing parent(s); and

_____ (iii) any over-collected adoption related expenses are never to be used for the benefit of the agency or anyone associated with the licensee or as a payment to a pre-existing parent(s), and may only be used for other documented pre-existing parent(s) adoption related expenses.

_____ (6) A child placing adoption agency shall provide a written disclosure statement of all agency fees and fixed or estimated adoption related expenses that prospective adoptive parent(s) may incur before the agency accepts any payments, or enters into any agreement with the prospective adoptive parent(s).

- (a) The written disclosure shall identify and itemize:
- (i) each fee and the services associated with each fee; and
 - (ii) each adoption-related expense.
- (b) If providing only a fee range, additionally provide the average cost for each itemized fee and each adoption-related expense for the preceding two fiscal years, and the maximum amount that may be charged for each fee and adoption related expense.
- (c) The written disclosure shall identify any fee that is non-refundable.
- (d) The written disclosure shall be signed and dated by the prospective adoptive parent(s) and an agency representative and maintained in the adoptive parent(s) file.
- (7) An agency shall not charge prospective adoptive parent(s) for any fees or adoption related expenses that the client obtained independently or were paid for by another entity, including any public assistance.
- (8) An agency shall not charge adoptive parent(s) for any fee that was not included in the written disclosure without providing written agreement and justification approved by the prospective adoptive parent(s), and either the Office of Licensing or the Court.
- (9) An agency shall not directly or indirectly offer, give, or attempt to give money or another thing of value in order to induce or influence pre-existing parent(s) in the adoption process.
- (10) The agency shall retain documentation for any adoption related expense exceeding twenty five dollars, which may include receipts, lease agreements, signed fund transfers to pre-existing parent(s) in reasonable amounts in order to cover basic daily needs such as food and household supplies, and any other pertinent documentation.
- (11) An agency shall not charge the adoptive parent(s) for the temporary living expenses of any person other than the pre-existing parent(s) or directly affected persons.
- (12) An agency shall not charge the adoptive parent(s) for any expenses that are post-confinement, with the exception of post-placement counseling if agreed upon.
- (13) A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parent(s) or the child placing adoption agency during her pregnancy unless they are first convicted of fraud.
- (14) Child placing adoption agencies that provide or pay for pre-existing parent(s)' transportation to the State of Utah shall also ensure that the pre-existing parent(s)' return transportation to their home state is provided, regardless of whether the pre-existing parent(s) decides to relinquish parental rights.
- (15) The agency shall create an affidavit of itemized accounting of the actual fees and adoption related expenses paid by the adoptive parent(s).
- (a) The agency shall utilize an affidavit form provided by the Office of Licensing or a form inclusive of the Office's form content.
 - (b) The affidavit shall be executed as follows:
 - (i) a copy shall be signed by the adoptive parent(s);
 - (ii) all adoption related expenses shall be itemized and signed upon receipt by the pre-existing parent(s), including declaration that Section 76-7-203 has not been violated;
 - (iii) the affidavit shall include a declaration of all gifts, property, or other items that have been or will be provided to the pre-

existing parent(s), including the source of the gifts, property or other items;

(iv) the affidavit shall include a declaration of the state of the residence of the pre-existing parent(s) and the prospective adoptive parent(s);

(v) the affidavit shall include a declaration of all public funds used for any medical or hospital costs in connection with the pregnancy, delivery of the child, or care of the child; and

(vi) the affidavit shall include the signature of an agency representative with adequate knowledge to verify the contents of the affidavit are accurate and complete.

R501-7-7. Services to Pre-existing Parents.

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to pre-existing parent(s), including disclosing all allowable adoptive parent(s) information to the birth family, except as governed by R512-41-11 for the Division of Child and Family Services.

(2) Child placing adoption agencies other than the Division of Child and Family Services shall:

(a) offer pre-existing parent(s) all available allowable adoptive parent(s) information unless waived in full or part by the pre-existing parent(s) as early in the matching process or consent to adopt process as reasonable;

(b) per 78B-6-119, accept voluntary relinquishments only after offering a minimum of three sessions of adoption related counseling to any person who is considering relinquishing a child for adoption prior to accepting the consent or relinquishment. This counseling shall include at a minimum:

(i) parental rights prior to relinquishments;

(ii) alternative options for the child and pre-existing parent(s); and

(iii) adoption issues including grief/loss;

(c) provide complete and accurate information to the pre-existing parent(s) regarding their decision to consent to adopt or relinquish;

(d) meet in-person, via video, or via telephone with the pre-existing parent(s) to review the designated adoption orientation form provided by the Office;

(i) pre-existing parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(ii) a pre-existing parent(s) under the age of 18 shall meet privately with the adoption worker unless they waive the option to meet privately;

(e) ensure the written consent to relinquishment includes language acknowledging that the pre-existing parent(s) was afforded adoption related counseling, and that the relinquishment is completely voluntary, permanent and irrevocable once signed under Utah Law;

(i) a child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125 or the laws of the state governing the relinquishment.

(3) If an agency arranges housing for pre-existing parents, assure that such housing complies with the following minimum standards:

(a) housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

(b) if the housing meets the definition of Residential Support (R501-22) the agency shall obtain a Residential Support license through the Office of Licensing;

(c) housing is clean, well-maintained and adequately furnished;

(d) birth mothers shall not share bedrooms with other birth mothers;

(e) laundry equipment and supplies shall be available; and

(f) adequate nutritious food, or resources to obtain food, is available.

(7) The agency shall be responsible to encourage and facilitate prenatal and medical care of the birth mother.

(8) A child placing agency shall inform pre-existing parent(s) of their information that will be shared with adoptive parent(s) including their detailed health history and a genetic and social history in accordance with Section 78B-6-143.

(9) A child placing adoption agency shall inform pre-existing parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(10) A child placing adoption agency may assist the birth and adoptive parent(s) in creating a post-placement contact agreement, including:

(a) whether the birth parent wants to disclose their identity to the adoptee or the adoptive family;

(b) contact about or from the child or parents, directly or indirectly, in the future and how that will occur;

(c) that such agreements are non-binding except in certain public child welfare cases; and

(d) Contact agreements shall be maintained in case file records.

R501-7-8. Services to Children.

(1) Assessment.

(a) A needs assessment for the child shall be completed to obtain information and identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family and promote appropriate placement for the child.

(b) The needs of the child will be determined through this assessment and shall evaluate for high needs or special needs as defined in this chapter.

(c) A report(s) regarding all assessment information shall be given to the adoptive parent(s) prior to placement.

(d) If the child is an infant that is not defined as special needs or high need, information shall be obtained from the pre-existing parent(s) and any legal guardian to include all allowable child/pre-existing parent(s) information as defined in this chapter. This information should include:

(i) If the child is older than six months the same information from Section 2 above, shall be obtained from the birth or legal parent;

(ii) additional information shall be obtained using an interdisciplinary approach which may include input from: caseworkers, therapists, pediatricians, teachers, previous caregivers, foster parents, nurses, psychologists, and other consultants.

(e) The assessment shall additionally include:

(i) information pertaining to changes in caregivers including foster care, separation experiences and description of the child's behaviors;

(ii) all evaluations regarding a child's development including: physical, social, emotional, mental health and cognitive;

(iii) the child's educational records, and any special educational needs;

(iv) talents and interests; and

(v) if the child is identified as having special needs or is a high needs child as defined in (2A-4a-601), specific training for prospective adoptive parent(s) is statutorily mandated.

(2) Recruitment of adoptive families.

(a) Child placing adoption agencies shall recruit adoptive families that are able to meet the needs of children the agency serves.

(b) If the family states they would be open to a child with special needs or high needs, they will complete training specific to identified needs and in compliance with 62A-4a-601.

(3) Matching.

(a) The selection of the adoptive family and the adoptive family's decision to adopt a specific child shall be based on the following:

(i) the child's assessment;

(ii) adoptive family's ability to meet the identified and potential needs of the child;

(iii) the wishes of the pre-existing parent(s) who voluntarily relinquish their rights, the adoptive parent(s), and when applicable, the child, shall be considered.

(4) Placement.

(a) A child placing adoption agency shall attempt to place siblings together when appropriate for the children's needs and pre-existing parent(s) wishes.

(b) A child shall be placed with the adoptive family at the earliest time possible after being freed for placement or adoption.

(c) A child placing adoption agency shall have an individualized written adoptive placement and transition plan that includes the child's current caregivers, the adoptive parent(s), and the child, to facilitate the child's transition into the adoptive family and ensures the family's ability to meet the child's needs.

(i) The transition plan shall consider and include as applicable:

(A) the child's stated preferences;

(B) the child's identified religion;

(C) identification of services the family and child may need based on assessment information;

(D) statement of who is responsible for identifying services and who is responsible for paying for such services;

(E) time frames for transition that consider and accommodate the identified and potential needs of the child in preparing the child for placement; and

(F) developmentally appropriate counseling with the child to address to mitigate transition related emotional trauma.

(d) If a child placing adoption agency other than DCFS, assumes custody of a child and the child is not able to be directly placed in an adoptive placement:

(i) the agency may temporarily place the child in a currently home studied adoptive home for up to 30 days; or

(ii) if the child needs temporary care for more than 30 days, the agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

(e) A private child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

(f) If a child is not placed within 30 days after relinquishment or after determination of availability for adoption by the court, the agency shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges

(5) Post Placement Service.

(a) The child placing agency shall monitor and support each placement until the adoption is final.

(b) An agency social worker shall contact the adoptive family within 2 weeks of the placement to offer support. This does not count towards the pre-finalization visit.

(c) Prior to finalization, a minimum of one in-home supervisory visit with both parents and child present shall be made by an agency social worker:

(i) to assess that the child and family are adjusting and child is receiving necessary care, nurturance, medical care, and services as needed.

(d) The agency shall monitor who has legal and physical responsibility for the child at all times.

(6) Disruption.

(a) If a disruption occurs, a child placing agency shall provide for the care of the child.

(i) The placement shall:

(A) be in a currently home studied adoptive home for no longer than 30 days unless it is the identified subsequent adoptive placement;

(B) be in a licensed or certified foster home governed by Rule R501-12; or

(C) be approved by a judge.

R501-7-9. Services to Adoptive Parents.

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to adoptive parent(s), including disclosing all allowable child/pre-existing parent(s) information to the prospective adoptive family

(2) A child placing adoption agency other than the Division of Child and Family Services shall:

(a) provide the adoptive parent(s) orientation form to potential adoptive parent(s) who shall sign and initial the form and shall be offered the opportunity to ask clarifying questions prior to match or payment of any fees in excess of \$500.00;

(i) adoptive parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(b) provide prospective adoptive parent(s) with a written description of their services, fees, policies and procedures;

(c) explain the adoption process and the pre-existing parent(s)' rights, including the status of any putative father, to the prospective adoptive parent(s);

(i) a copy of the Office provided pre-existing parent(s) adoptive orientation form shall be provided to adoptive parent(s) for information purposes with an acknowledgement that they have discussed and received this information;

(d) provide training as outlined in 62A-4a-609 in regards to high needs child, as required;

(e) per 62A-4a-607 the agency shall inform each prospective adoptive parent(s) that the state has children available for adoption and that adoption from the Division of Child and Family Services incurs no agency fees and adoption assistance may be available when adopting children in the custody of the state;

(f) inform adoptive parent(s) that when a child has a disability, the child may be eligible for SSI benefits and/or federal adoption assistance. The Agency shall refer the potential adoptive parent(s) to coordinate with the Division of People with Disabilities for further disability resources and with Division of Child and Family Services to apply for potential federal adoption assistance; and

(g) a child placing adoption agency shall inform pre-existing parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(3) A home study completed by an adoption service provider as outlined in 78B-6-128-2(C) for each adoptive family shall include:

(a) a recommendation to the court regarding the suitability of the prospective adoptive parent(s) or placement of a child;

(b) a description of in-person interviews with the prospective adoptive parent(s), prospective adoptive parent(s)', children, and other individuals living in the home;

(c) criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, R501-18, and Sections 53-10-108(4) and 78B-6-128;

(d) written descriptions from at least two non-related and one related references regarding the character and suitability of the prospective adoptive parent(s) for parenting an adoptive child;

(e) a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within two years prior to the date of the application;

(f) description of inspections of the home, to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained; and

(g) description of documented income for each adoptive applicant and a written plan for adoptive applicants who work outside the home addressing how they shall provide security and responsible child care to meet individual child needs.

(4) The adoptive applicants shall be informed, in writing, and within ten business days after the decision is made, as to the acceptance or the reasons for the denial of their home study.

(a) The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, upon order of the court in accordance with Section 78B-6-128.

(5) A child placing adoption agency shall select applicants who:

(a) are able to provide the continuity of a caring relationship;

(b) are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

(c) understand the needs of a child at various developmental stages.

(6) The agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parent(s). This disclosure shall also be clearly stated in writing on the adoptive parent(s)' application for services forms.

(7) The agency shall verify that an applicant's income is sufficient to provide for a child's needs.

(8) The agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how

they shall provide security and responsible child care to meet the individual child's needs.

(9) Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

(10) Matching.

(a) Disclose all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(b) Ensure known special needs are disclosed and referrals and information are provided as necessary to prepare the family to meet the long term needs of the child.

(c) A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parent(s) have first given their written consent, indicating that they have been fully informed of the specific risks involved.

(d) Develop the capacities of the parents to meet the ongoing needs of the child according to the child's needs and the transition plan.

(e) Matches may only occur once sufficient non-identifying information sharing has occurred to allow for informed decision making by both parties.

(11) Placement.

(a) A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, to include:

(i) providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups; and

(ii) monitoring the child's adjustment and development.

(b) The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other challenges, and whether the adoptive parent(s) are faced with unanticipated problems.

(c) The first contact after placement shall take place within two weeks of placement.

(d) A minimum of one face-to-face supervisory home visit after the initial two week contact shall take place before finalization.

(12) Disruption.

(a) The agency may remove the child for the adoptive placement due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parent(s); the separation or divorce of the adoptive parent(s); the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

(b) If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parent(s) shall be entitled to appeal the removal decision.

(i) The agency shall provide the adoptive parent(s) written notice of their right to appeal and the procedure for appeal.

(13) Finalization.

(a) A child placing adoption agency shall provide assistance in finalizing the adoption.

R501-7-10. Intercountry Adoptions.

(1) All intercountry adoptions are considered high needs per 62A-4a-601 and require compliance with 62A-4a-609.

(2) In addition to complying with all other rules, laws and statutes regarding adoption, a child placing adoption agency that is a primary provider of inter-country placement services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and including:

(a) the agency is Hague accredited by a Department of State approved accrediting body;

(b) the child is legally freed for adoption in the country of origin;

(c) the agency verifies and maintains documentation and agreements regarding the credentials and qualifications of all associates working in their behalf in foreign countries; and

(d) information was provided to the adopting parents about naturalization and US citizenship proceedings.

(3) A child placing adoption agency that provides intercountry adoption services shall:

(a) comply with all fee requirements from R501-7-6;

(b) establish additional policies and procedures to be provided to the adoptive parent applicant(s) regarding:

(i) agency and adoptive parent(s) responsibilities regarding intercountry adoption;

(ii) post adopt responsibilities;

(iii) identification and disclosure of medical risks in international adoption;

(iv) service planning; and

(v) establish an official and recorded method of fund transfers to avoid the use of direct cash transactions to pay for adoption services in other countries;

(c) additionally include in the written agency fee disclosure required in R501-7-6 the following:

(i) itemization of all services and total cost of providing adoption in the child's country of origin and disclosure of whether the fees are paid directly or through the agency to include:

(A) foreign country/legal fees;

(B) cost of documents required by the agency and by the foreign government as well as costs of apostille or authentication of these documents;

(C) required fees paid to USCS;

(D) estimated costs of travel to the foreign country;

(E) translation of documents provided to the foreign adoption officials;

(F) costs of child care;

(G) parent education costs;

(H) adopted child passport;

(I) USCS-required medical exam costs;

(J) immunization expenses; and

(K) any other miscellaneous fees that may apply;

(ii) itemization of any mandatory payments to child welfare programs in the country of origin including:

(A) any fixed contributions amounts;

(B) intended use of payments; and

(C) manner in which the transaction will be recorded and accounted for;

_____ (d) provide all applicants with written policies governing refunds;

_____ (e) notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program;

_____ (f) verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries; and

_____ (g) in addition to adoptive parent(s) and child file content requirements in R501-7-11, intercountry adoption files shall also include:

_____ (i) signed agency agreements and/or contracts;

_____ (ii) USCS approval to proceed with a foreign adoption;

_____ (iii) copies of adoption documents required by the adoption officials in the foreign country;

_____ (iv) copies of all child information provided by the foreign country;

_____ (v) post-adoption reports required by the foreign country; and

_____ (vi) copy of the adoption finalization from the foreign country.

R501-7-11. Administrative Documentation.

_____ (1) Provisions of this section do not apply to the Division of Child and Family Services as they governed by their own rules, statutes, and documentation requirements that are more restrictive and extensive than those outlined here, including 78A-6-306 Shelter Hearing, 307 Placement, 310 Adjudication hearing, 312 Reunification services, 314 Permanency hearing and 316 Termination of parental rights.

_____ (2) Adoptive Parent(s) Files shall cross-reference all related files and shall contain:

_____ (a) signed and dated application for service including agency disclosure of religion and marital status polices on the application;

_____ (b) signed and dated adoptive parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

_____ (c) proof that the content of the pre-existing parent(s) adoption orientation form was provided to adoptive parent(s);

_____ (d) proof of compliance with 62A-4a-607 regarding the availability of children in state custody for adoption;

_____ (e) itemized written fee disclosure statement as described in Section R501-7-6 signed and dated by prospective adoptive parent(s) and agency representative prior to entering any agreements as outlined in;

_____ (f) proof of identification or documented due diligence to determine identity;

_____ (g) copies of marriage certificates, divorce papers, custody and visitation orders, proof of US citizenship;

_____ (h) proof that all allowable child/pre-existing parent(s) information was shared with adoptive parent(s);

_____ (i) voluntary consent agreement acknowledging conflict of interests per R501-7-4 (A);

_____ (j) documentation and itemization of all reasonable and actual adoption-related expenses that exceed \$25.00 charged to the adoptive parent(s) as outlined in R501-7-6 to include:

_____ (i) written agreement and justification for any expenses charged to the prospective adoptive parent(s) outside the fee disclosure statement;

_____ (ii) affidavit signed by adoptive parent(s) and agency representative outlining itemized actual expenditures made on behalf of the pre-existing parent(s) as outlined in fees disclosures section R501-7-6;

_____ (k) record of all payments received and disbursements made;

_____ (l) home study/pre placement evaluation as outlined in R501-7-9 and 78B-6-128;

_____ (m) case notes describing all services provided;

_____ (n) physician report for each prospective adoptive parent;

_____ (o) background clearances for prospective adoptive parent(s) and all adults over age 18 residing in the home;

_____ (p) proof of ability to provide health care for an adopted child;

_____ (q) 4 letters of reference;

_____ (r) documentation of all requests for information or sharing of information to include:

_____ (i) post adopt information exchange with pre-existing parent(s); and

_____ (ii) post adopt contact terms with pre-existing parent(s);

_____ (s) transition plan for child transition to adoptive placement;

_____ (t) written consent to legal risk placement if applicable;

_____ (u) documentation of the initial agency contact with the adoptive family within 2 weeks of placement;

_____ (v) documentation of one in-home face-to-face supervisory visit prior to finalization post two week visit;

_____ (w) original or certified copy of the order of adoption; and

_____ (x) any other documentation required in order to show compliance with this Rule.

_____ (3) Pre-existing parent(s) files shall cross reference all related files and shall contain:

_____ (a) signed and dated application for service to include declaration of birth mother's husband or paramour's relationship to the child;

_____ (b) proof of identification or documented due diligence to determine identity;

_____ (c) signed and dated pre-existing parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

_____ (d) documentation of putative registry search in compliance with 78B-6-110.5 and any communications with potential birth fathers;

_____ (e) documentation of any requests for information or sharing of information;

_____ (f) genetic and social history, and health history;

_____ (g) case notes describing services provided including pre relinquishment counseling;

_____ (h) original or certified copies of relinquishment transfer or decree of termination of birth mother and birth father rights per 78B-6-125 (or the state governing relinquishment);

_____ (i) proof that non-identifying information was provided re: the adoptive parent(s);

_____ (j) proof of compliance with 78B-6-143 and 78B-6-144;

(k) copies of marriage certificates, divorce papers, custody and visitation orders, if any;

(l) certified copies of death certificates, if any, of pre-existing parent(s);

(m) pre-existing parent(s) written agreements or refusals of:

(i) waiver of confidentiality;

(ii) authorization of release of information;

(iii) future third party searcher;

(iv) post adopt information exchange with adoptive parent(s);

(v) post adopt contact terms;

(n) verification that all itemized goods and services billed to the adoptive parent(s) were actually provided to the pre-existing parent(s);

(o) documentation of other alternative payment sources, including public assistance; and

(p) any other documentation required in order to show compliance with this rule.

(4) Child Files shall cross reference all related files and shall contain:

(a) deeds assessments, evaluations, family background study of current and historical physical, psychological, genetic and developmental health information as required in R501-7-8 A and B;

(b) individualized assessment determining which adoptive family was selected and why as a means to meet all of the identified wishes and needs of all involved;

(c) case notes describing all services provided and referred;

(d) copies of any DHS licenses for children placed in outside agency foster care;

(e) transition plan for child to adoptive placement; and

(f) any other documentation required in order to show compliance with this rule.

(5) File maintenance.

(a) In the event that any records required in this Rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

(b) All case files shall be retained for a minimum of 100 years from the date the case is closed.

(c) If not continuing to operate and incapable of maintaining their own files for 100 years, the agency shall notify the Office of Licensing and post publicly where the records shall be stored:

(i) it is permissible for a closed child placing adoption agency to transfer closed adoptive files to another licensed child placing for maintenance as long as the chain of control is clear and transparent to the Office and prior clients, there is good reason to believe that the files will be maintained according to law.

(d) All adoption records shall be confidential and shall be maintained in a secure location when not in active use;

(i) adoption records shall be accessible only by authorized agency employees or agents;

(ii) no information shall be shared with any person without the appropriate consent forms, except as required by law.

(e) Adoption records, with the exception of reference letters, are not sealed and information in adoption files can be provided to adoptive parent(s) upon request.

(f) A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received the number of children, pre-existing parent(s),

and adoptive parent(s) served, and the number of adoptions and disruptions, and the number of children in agency custody.

(g) Agency must have a written plan involving a secondary entity for contact and file maintenance in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored;

(i) it is permissible for a child placing adoption agency to transfer closed adoptive files to another licensed child placing for maintenance as long as the chain of control is clear and transparent to prior clients; and

(ii) enable record retrieval by individuals with a right to access them.

KEY: licensing, human services, child placing

Date of Enactment or Last Substantive Amendment: [~~November 27, 2013~~2018

Notice of Continuation: October 18, 2012

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

Insurance, Administration R590-266-1 Authority

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42319

FILED: 11/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change removes the reference to Section 31A-30-116 which was repealed in H.B. 336, Health Reform Amendments, during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The only change in the rule is to remove the reference to Section 31A-30-116, which was repealed in H.B. 336 (2017). However, the Insurance Department (Department) still has rulemaking authority for the provisions of this rule which have been reflected in the changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3)(a) and Subsection 31A-2-212(5)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The change only updates the references of statutory scope for the Department's authority to promulgate the rule.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. The change only updates the references of statutory scope for the Department's authority to promulgate the rule.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The change only updates the references of statutory scope for the Department's authority to promulgate the rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. The change only updates the references of statutory scope for the Department's authority to promulgate the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as a result of this amendment. The change only updates statutory reference for the Department's authority to promulgate the rule. It requires no action to be taken by any persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact to businesses. This change was necessary because H.B. 336 (2017). The effects of the change only apply to the Department and will have no fiscal impact on it or any other persons in the state.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-266. Utah Essential Health Benefits Package.

R590-266-1. Authority.

This rule is promulgated pursuant to [~~Subsection 31A-30-46(3)(b)~~Subsections 31A-2-201(3)(a) and 31A-2-212(5)] wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah.

KEY: essential health benefit insurance

Date of Enactment or Last Substantive Amendment: [May 23, 2016]2018

Authorizing, and Implemented or Interpreted Law: [31A-30-46(3)(b)]31A-2-201(3)(a); 31A-2-212(5)

Natural Resources, Administration R634-3 Compensatory Mitigation Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 42309

FILED: 11/07/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the Utah Sage-grouse Compensatory Mitigation Program, pursuant to the terms and conditions of Section 79-2-501 et seq.

SUMMARY OF THE RULE OR CHANGE: This rule proposes to create a compensatory mitigation program that will help various entities to offset the impacts of development on greater sage-grouse and their habitats. Stakeholder communication: There are seven Divisions within the Utah Department of Natural Resources (DNR), including the Utah Division of Wildlife Resources; the Utah Division of Parks and Recreation; the Utah Division of Water Rights; the Utah Division of Water Resources; the Utah Division of Forestry, Fire and State Lands; the Utah Division of Oil, Gas and Mining; and the Utah Geological Survey. Each Division has its own process for soliciting and receiving input from stakeholders when proposing changes to Administrative Rules. DNR itself makes changes to administrative rules very infrequently, so DNR does not have a required process for gathering such input. In light of this, DNR took a proactive and collaborative approach to interacting with various stakeholders and gathering public input during the development of this proposed rule. As a result of those efforts, DNR personnel coordinated numerous meetings with key stakeholders who would be, or could be affected by this proposed rule. By doing so, DNR personnel, along with one designee from the Utah Division of Wildlife Resources and one assigned designee by the Governor's Public Lands Policy Coordinating Office, gathered feedback from stakeholders both before and during the drafting of this proposed rule. This process ensured effective, collaborative and proactive involvement from various stakeholders prior to the formal administrative rulemaking and public review process. The following is a summary of the organizations and individuals that DNR and its assigned designees met with prior to the submission of this proposed rule: United States Forest Service; United States Bureau of Land Management; United States Natural Resource Conservation Service; Utah Division of Forestry, Fire and State Lands; Utah Division of Oil, Gas and Mining; Utah Department of Transportation; Western Energy Alliance and various members; Utah Petroleum Association and various members; Utah Mining Association

and various members; K-COE Isom; QEP Resources; Utah Chukar Foundation; Utah Sage-grouse Plan Implementation Council; Rocky Mountain Power; Nature Conservancy; Utah Farm Bureau; Utah Cattlemen's Association; Uintah Basin Adaptive Resource Management, Local Working Group; and Strawberry Valley Adaptive Resource Management, Local Working Group. Each meeting with the above referenced organizations and individuals was structured around three central topics including: 1) what items/issues are requested to be included in the proposed rule; 2) what items/issues are requested to be avoided in the proposed rule; and 3) items that need additional clarity or follow-up. This approach framed each discussion fairly and consistently across stakeholder groups, and allowed for an effective process for drafting a proposed rule that proactively addressed as many issues as possible. Every good-faith effort has been made to include a summary of every meeting related to this proposed rule. But in light of practical and reasonable limitations, as well as the complexity and scope of this issue, it should be noted that this listing is not exhaustive.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-2-501

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that the revenue needed to administer this program will be recovered by the proceeds created by the implementation of the program. Therefore, this program is expected to be revenue and cost neutral to the state of Utah in the long-term.

◆ LOCAL GOVERNMENTS: This proposed rule does not require participation by local governments. Local governments that choose to participate in this program will do so voluntarily, and will be given an opportunity to evaluate the cost and benefit of their participation in the program before doing so.

◆ SMALL BUSINESSES: This proposed rule does not require participation by any entity. Therefore, this filing does not create any direct cost or savings impacts to other persons or entities. Those who choose to participate in this program will do so voluntarily, and will be given an opportunity to evaluate the cost and benefit of their participation in the program before doing so.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed rule does not require participation by any entity. Therefore, this filing does not create any direct cost or savings impacts to other persons or entities. Those who choose to participate in this program will do so voluntarily, and will be given an opportunity to evaluate the cost and benefit of their participation in the program before doing so.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This program does not require participation, therefore no compliance cost is anticipated. For those who choose to participate in this program, the cost to do so is intended to be advantageous to the organization and/or individual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is intended to be mutually beneficial to businesses, local, state, and federal governmental agencies and to the conservation of greater sage-grouse in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 ADMINISTRATION
 ROOM 3710
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Kaelyn Anfinen by phone at 801-538-7201, by FAX at 801-538-7315, or by Internet E-mail at kaelyn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2018

AUTHORIZED BY: Michael Styler, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

The compensatory mitigation program is not new just to Utah but to the other 10 Western States that are developing programs with the similar objective of keeping Greater Sage-grouse from being listed under the U.S. Endangered Species Act. The number of private landowners who will attempt to develop credits for sale under this program as is the number of businesses who will need credits from disturbing Sage-grouse Habitat on federal lands and will be required to complete mitigation. We will know a lot more by 2020 when the listing decision for Greater Sage-grouse will be reviewed by the U.S. Fish and Wildlife Service but at this time both the fiscal costs and fiscal benefits are inestimable

R634. Natural Resources, Administration.**R634-3. Compensatory Mitigation Program.****R634-3-1. Authority and Purpose.**

(1) Under authority of Utah State Code Section 79-2-501 et seq., this rule establishes the State of Utah's Compensatory Mitigation Program, including procedures for implementing the program to mitigate for permanent disturbances to greater sage-grouse (hereafter sage-grouse) habitat in Utah.

(2) This rule incorporates the conservation strategies contained in the "Conservation Plan for Greater Sage-grouse in Utah".

(3) Sage-grouse habitat in Utah is naturally fragmented due to topography, encroachment of conifer trees, fire, and invasive weeds such as cheat grass. Human-related activities have also contributed to habitat fragmentation. Research conducted on sage-grouse in Utah has clearly demonstrated that the species is space-limited and responds positively when new habitat is created. This compensatory mitigation program will be used to increase space (i.e., habitat) for greater sage-grouse and to connect disjointed habitat by creating connections and corridors where they do not exist. Acres of habitat lost and created will be the measure used to guide the implementation and track the success of the program in Utah. Other programs in Utah, including the Watershed Restoration Initiative, Sage-grouse Initiative and the Grazing Improvement Program, conduct projects to improve the quality of the habitat. The lessons learned from those programs will guide the implementation of this rule.

R634-3-2. Program Goals.

(1) The Compensatory Mitigation Program seeks to offset the impacts of permanent disturbances to sage-grouse habitat in Utah by:

(a) encouraging responsible economic development through avoiding and minimizing permanent disturbance within sage-grouse habitat, when possible, and thereby maintaining the distribution of functional sagebrush habitats within Sage-grouse Management Areas (SGMAs) in Utah; and

(b) providing Compensatory Mitigation resulting in an increase to or protection of functional habitat to offset the impacts from Permanent Disturbance in sage-grouse habitats within Utah.

R634-3-3. Definitions.

(1) "Agreement Fee" means a sum of money paid by a Credit Provider upon entering into a Term Mitigation Agreement or Conservation Bank Agreement with the Department to offset the Department's costs in administering the Agreement.

(2) "Application Fee" means a sum of money paid by an applicant to the Department to offset the cost of processing any compensatory mitigation applications submitted to the Department.

(3) "Area of Permanent Disturbance" means the area within a spatial polygon circumscribing the actual permanently disturbed area directly impacting sage-grouse or its habitat.

(4) "Baseline" means the pre-existing condition of a defined project area, prior to commencing any Credit Generation Project.

(5) "Bank Property" means permanently protected real property included in or devoted to the development of a Conservation Bank.

(6) "Compensatory Mitigation" means the restoration or establishment of sage-grouse habitat or permanent protection of existing occupied habitat to offset the unavoidable adverse impacts which remain following permanent disturbance to sage grouse habitat.

(7) "Compensatory Mitigation Program" means the sage-grouse habitat mitigation program created by Title 79, Chapter 2, Part 5 of the Utah Code and this Rule.

(8) "Conservation Bank" means a site or suite of sites of at least 640 contiguous acres established under a Conservation Bank Agreement with the Department that provides ecological functions and services for sage-grouse, expressed as Credits that are conserved and managed in perpetuity and used to offset impacts to sage-grouse habitat expressed as Debits, occurring elsewhere.

(9) "Conservation Bank Agreement" means the legal document for the establishment, operation and use of a conservation bank.

(10) "Conservation Easement" means a voluntary legal agreement between a landowner and a third party that limits the use or development of land to protect sage-grouse habitat values.

(11) "Corridor" means an area of land that facilitates sage-grouse movement between two or more areas of Occupied Habitat containing less than 1% canopy cover in conifers and at least 15% ground cover in perennial grasses, shrubs, and forbs, and is at least 100 acres in size with a width of at least 2000 feet.

(12) "Credit" means an acre of Functional Habitat or Corridor lands created, restored, or preserved by a Credit Provider that may be transferred to a Credit Buyer to offset impacts of Permanent Disturbances and which represents the value in Compensatory Mitigation activities.

(13) "Credit Buyer" means any person who purchases Credits to offset the impacts of permanent disturbances to sage-grouse habitat.

(14) "Credit Exchange Service" means a tool created by the Department to track the development, maintenance and transfer of Credits.

(15) "Credit Generation Project" means any planned project implemented by a Credit Provider or a designee within any SGMA to create, restore, or preserve Functional Habitat or to create, restore, or preserve Corridors to generate Credits.

(16) "Credit Maintenance" means the actions required to ensure that Credit acreage continues to operate as Functional Habitat or Corridor lands for the duration of the disturbance it was intended to offset.

(17) "Credit Provider" means any person or entity that creates or restores Functional Habitat or Corridor(s) to generate Credits to be transferred utilizing the Credit Exchange Service.

(18) "Credit Transfer Fee" means a sum of money paid by a Credit Buyer to the Department when a Credit Provider transfers Credits to a Credit Buyer to offset the Department's costs in administering this Program.

(19) "Debit" means an acre of sage-grouse habitat permanently disturbed in a SGMA for which Compensatory Mitigation is applicable.

(20) "Department" means the Utah Department of Natural Resources, the agency responsible for administering the Compensatory Mitigation Program.

(21) "Durability" means the ability for mitigation measures to remain effective for a period of time that is at least as long as the impacts from the permanent disturbance that the mitigation is designed to offset.

(22) "Functional Habitat" means any sage-grouse habitat, created through a Credit Generation Project, contiguous with existing Occupied Habitat, and which includes a live sagebrush canopy cover of at least 10% and no more than 1% canopy cover of conifer trees over 0.5 meters in height.

(23) "Habitat" means the aggregation of Seasonal Habitats used by sage-grouse during their yearly life-cycle.

(24) "In-lieu Fee" means money provided to the State, at the direction of a regulatory agency, to be used for restoration and enhancement of sage-grouse habitat, with the goal to create or restore Functional Habitat that satisfies Compensatory Mitigation requirements to offset Permanent Disturbances on federal or state lands.

(25) "Mitigation Ratio" means the ratio of Credits needed by a Credit Buyer or produced by the State to offset any Permanent Disturbance within sage-grouse habitat. Any person causing Permanent Disturbance to an acre of sage-grouse habitat should provide four acres of Functional Habitat, Protected Habitat, or Corridors as a proper Mitigation Ratio to offset indirect impacts from disturbance and account for differences in habitat quality without conducting a detailed analysis of either factor.

(27) "Occupied Habitat" means any Habitat utilized by Sage-grouse during any portion of their annual lifecycle.

(28) "Permanent Disturbance" means a human caused action that results in a loss of sage-grouse Habitat for a period of five or more years and includes all areas where the direct effects of the action could be expected to disrupt the common activities of sage-grouse for a period of five years or more.

(29) "Plan" means the current Conservation Plan for Greater Sage-grouse in Utah.

(30) "Program Administrator" means the Executive Director of the Department, or their designee, with authority to establish, operate and manage the Compensatory Mitigation Program.

(31) "Project Area" means the geographic boundary of any Credit Generation Project.

(32) "Protected Habitat" means an area of occupied functional habitat that is preserved from permanent disturbance through a conservation easement for at least 20 years and is maintained to meet the definition of functional habitat or corridor for the length of the easement.

(32) "Remedial Action" means any corrective measures which a Credit Provider is required to take to ameliorate any injury or adverse impact to Credits or Transferred Credits to ensure long-term durability of Functional Habitat.

(33) "Reserve Pool" means a pool of Credits, managed by the Program Administrator or a Bank Manager, intended to cover risks of potential Reversals on any Project Area.

(34) "Reversal" means a Compensatory Mitigation Credit that does not persist as Functional Habitat for the full duration of the Permanent Disturbance.

(35) "SGMA" means Sage-grouse Management Areas as identified in the Plan.

(36) "Seasonal Habitat" means all habitats utilized by sage-grouse for survival during some portion of its life cycle, including leks, nesting, brood rearing, late brood rearing, transitional corridors, and winter habitat.

(37) "Service Area" means any SGMA within the State of Utah.

(38) "SITLA Lands" means lands owned or managed by the Utah School and Institutional Trust Lands Administration.

(39) "State Lands" means lands owned or managed by any State of Utah agency other than SITLA.

(40) "Term Mitigation Agreement" means an agreement between the Department and any person(s) owning or controlling property adjacent to Occupied Habitat within any SGMA, where the landowner generates Functional Habitat or Corridor(s) for the benefit of sage-grouse, and which actions result in the creation of Credits to be transferred to Credit Buyers to offset Permanent Disturbances to sage-grouse Habitat.

(41) "Transfer" means the conveyance of Credits from one person or entity to another to offset impacts from Permanent Disturbance.

(42) "Transferred Credit" means any Credit transferred from the Department's Credit Exchange Service to offset impacts from Permanent Disturbance.

(43) "Verification" means the process(es) used to confirm that Compensatory Mitigation Program rules have been followed through standardized reporting and monitoring.

(44) "Verifier" means any person or entity that has been accredited by the Department and certifies or monitors the existence of Functional Habitat or Corridors following Credit Generation Projects utilizing the scientific methods and guidelines approved by the Department.

R634-3-4. State Sponsored Compensatory Mitigation Program.

(1) Compensatory Mitigation for Impacts to Private, SITLA and other State Lands.

(a) To meet the mitigation requirements in the Utah Conservation Plan for Greater Sage-grouse, the Department will:

(i) Generate four acres of Functional Habitat or Corridors in SGMAs for every one acre of Permanent Disturbance on private or SITLA Lands in any SGMA; and

(ii) For every one acre of Permanent Disturbance on State Lands, other than SITLA lands, in any SGMA, the Department will work with other state agencies to generate four acres of Functional Habitat or Corridors.

(2) Determination of Disturbance.

(a) In consultation with county governments and other state agencies, the Department will determine the number of acres of permanent disturbances within all SGMA's on private, SITLA and State Lands every three years, or whenever information becomes available to the Department.

(3) State Credit Generation Projects.

(a) The Department will identify potential Credit Generation Projects within non-functional habitat in any SGMA. Prior to initiation of any Credit Generation Projects on SITLA, State Lands or federal lands, the Department will assess the Project Area to document the Baseline acres of Functional Habitat present within the Project Area before treatment. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(b) The Department will consult with the concerned county government and other appropriate agencies before conducting the project.

(c) The Department will meet annually with federal agencies with jurisdiction over federal lands to identify potential Credit Generation Projects that may be completed on federal lands utilizing non-federal dollars. Credit Generation Projects will only be initiated after compliance with any necessary federal planning and permitting requirements. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(4) Verification and Tracking of Credits.

(a) Upon completion of any Credit Generation Project on SITLA, State Lands or federal lands, the Department will assess the Project Area utilizing a Verifier to certify the number of Credits generated on the Project Area. Once Credits are certified by the Department, it will track the Credits utilizing the Credit Exchange Service as provided in Section 3-7(1).

(b) Credits generated by the Department will offset Permanent Disturbance on private, SITLA and other State Lands. Credits generated by the Department will not be transferred to Credit Buyers except as provided in 3-4(7).

(5) Monitoring and Maintenance.

(a) The Department will monitor the condition of each Credit utilizing the monitoring and assessment guidelines it adopts pursuant to Section 3-7(5).

(b) If results from monitoring and assessment demonstrate that Credits produced by the Department no longer provide Functional Habitat or Corridors, then the Department may conduct habitat maintenance projects to restore the Credits, or it may create additional Credits to replace them.

(6) Duration, Durability and Reversals. State Assurance.

(a) The Department will ensure that any Credits generated by the Department to offset permanent disturbance in any SGMA will be maintained for the duration of any direct and indirect impacts from Permanent Disturbance on those lands and tracked using the Credit Exchange Service.

(b) In the event of a Reversal to any Credits generated by the Department, the Department will apply additional replacement Credits from other Credit Generation Projects in any SGMA throughout the State. Any actions taken under this Section will be tracked in the Credit Exchange Service.

(7) Federal Agency Use of State Generated Credits.

(a) If a federal agency would like to utilize Credits generated by the State to offset Permanent Disturbance on federal lands, the Department may enter into a written agreement with the federal agency outlining the federal agencies' need and use of Credits to offset Permanent Disturbances on federal lands.

(b) Any federal agency may authorize the use of in-lieu payments from a person permanently disturbing habitat to offset the Department's cost to generate monitor, and maintain the Credits. Upon payment of the in-lieu fee to the Department, the federal agency will provide a written receipt stating that the compensatory mitigation requirements are satisfied and allow a project causing permanent disturbance to habitat to proceed on federal lands.

R634-3-5. Term Mitigation Credit Program.

(1) Application; Minimum Qualifications. Any person desiring to enter into a Term Mitigation Agreement with the Department to create Credits to mitigate the impacts of disturbances to sage-grouse habitat within Utah, must:

(a) Own or control and manage at least 100 contiguous acres adjacent to Occupied Habitat in any SGMA in Utah identified in the Plan that is not Functional Habitat or a Corridor, but with completion of a Credit Generation Project may become Functional Habitat or a Corridor or own, manage and control at least 100 acres of occupied habitat that may become protected habitat.

(b) File a completed application with the Department, which, at a minimum, shall include:

(i) name of the owner of the surface and mineral rights on the property;

(ii) legal description of the proposed Project Area and the total number of acres owned by the applicant;

(iii) the number of acres on which Credits will be generated;

(iv) the term of years the person will maintain the Credits on the property, after completing any Credit Generation Project on the property as identified in the Term Mitigation Agreement; and

(v) the Application Fee as set by the Legislature.

(c) Upon receiving any completed application, the Department will make a habitat suitability determination identifying whether the proposed Credit Generation Project will likely result in Functional Habitat or Corridor(s) on the property and identify the number of potential Credits which may result from the creation of Functional Habitat or Corridor(s). In the event another person owns the mineral rights on an applicant property, the Department may request a mineral report for the property.

(d) The Department may deny any application that is incomplete or does not meet the guidelines outlined in this Section.

(e) The Department will consult with the concerned county government and other appropriate agencies before approving the application.

(2) Establishment of Term Mitigation Agreement.

(a) If the Department determines that an applicant property is suitable for generating Credits, it may enter into a Term Mitigation Agreement with the property owner, identifying, at a minimum:

(i) the scope of work necessary to create and maintain Credits on the Property;

(ii) the entity or person(s) responsible to perform any Credit Generation Projects;

(iii) a management plan identifying maintenance and verification duties for the landowner or a third-party entity;

(iv) the term of the years for Credit Maintenance;

(v) an option clause for renewing the agreement for an additional term of years;

(vi) the legal or financial mechanisms utilized by the landowner to provide assurances to the Department that the Credits generated on the landowner's property will be in place for the duration of the agreement; and

(vii) for split-estate properties, the Department may require the owner of a mineral estate to co-sign the Term Mitigation Agreement and provide a written guarantee that the mineral estate will not be developed during the term of the agreement.

(b) In no event shall the term of a Term Mitigation Agreement be less than twenty (20) years, which starts when the credit generation project is verified.

(3) Credit Generation Projects

(a) Prior to initiation of any Credit Generation Project, the Department will assess the Project Area to Verify the number of acres of Functional Habitat or Corridors present on the Project Area before the landowner conducts any Credit Generation Projects.

(b) After conducting any necessary pre-project assessments, a Credit Provider or its designees will complete any Credit Generation Projects as outlined in the Term Mitigation Agreement.

(4) Verification; Tracking of Credits.

(a) Once the Credit Generation Projects are completed, as identified in the Term Mitigation Agreement, a Verifier will inspect the Credit Generation Project area, determine the number of Credits generated on the property, and provide a Certificate of Credits to the landowner identifying the number of Credits available on the property that may be transferred to a Credit Buyer utilizing the Credit Exchange Service.

(b) Prior to entering the credits in the Credit Exchange Service, the Department shall collect the Agreement Fee set by the Legislature from the Credit Provider to offset any costs of administering the Term Mitigation Agreement.

(c) Upon certifying the Credits, the Department will track the Credits in the Credit Exchange Service identified in Section 3-7(1).

(5) Assessment and Monitoring of Credits.

(a) Credits generated under this Section will be monitored by the Credit Provider and the Department, as outlined in the Term Mitigation Agreement, to ensure that Credits continue to serve as Functional Habitat or Corridors for sage-grouse throughout the duration of the Term Mitigation Agreement.

(b) Credits will be monitored using the Department's Monitoring and Credit Maintenance Policies developed under Section 3-7(5). The Program Administrator may utilize monitoring results to amend the Credit maintenance requirements outlined in the Term Mitigation Agreement.

(6) Durability and Assurances.

(a) Prior to the Department listing any Credits on the Credit Exchange Service, the Credit Provider shall provide the Department with financial and/or legal assurances that the Credits developed will be protected for the duration of the Term Mitigation Agreement. Financial assurances may include Letters of Credit,

Performance or Guarantee Bonds, Escrow Agreements, endowments or Causality Insurance coverage to offset any losses or reverses to the Credits on the property. Legal assurances may include permanent or term easements, deed restrictions, and contractual guarantees.

(7) Credit Expiration; Renewal of Exchange Agreements.

(a) All Credits generated or transferred under this Section will automatically expire at the end of the term set out in the Term Mitigation Agreement regardless of whether or not the Credit was transferred. Upon expiration of any Credit, the Department will remove the Credit from the Credit Exchange Service.

(b) The Term Mitigation Agreement can be renewed for an additional term as outlined in the agreement. Prior to reissuing the Credits in the Credit Exchange Service, the Department or a Verifier will confirm that the Credits remain as Functional Habitat or Corridors.

(c) In the event the Department or any person terminates the Term Mitigation Agreement prior to the terms outlined in the agreement, the person providing the Credit Generation Project shall pay the Department its actual costs to obtain or create replacement Credits to complete the remaining years listed in the agreement.

(8) Federal Agency Use of Term Credits.

(a) Any federal regulatory agency that directs Credit Buyers to purchase Term Credits from the Credit Exchange Service is encouraged to utilize the Mitigation Ratios recommended herein, including mitigating at four acres for every one acre of Permanent Disturbance.

(b) Any federal regulatory agency may place additional requirements on a Credit Buyer for maintaining, monitoring, verifying or providing additional assurances for Credits utilized to offset disturbances to sage-grouse habitat on federal land. The federal agency, or a Credit Buyer will be responsible for any additional monitoring or verification requirements developed by a federal agency.

R634-3-6. Conservation Banks.

(1) Jurisdiction.

(a) The Department has jurisdiction over the creation and regulation of Conservation Banks for Sage-grouse in Utah. Any person desiring to operate a Conservation Bank and transfer Credits generated by the Conservation Bank must first receive authorization from the Department.

(2) Application; Minimum Qualifications.

(a) Any person desiring to establish a Conservation Bank in Utah to create and protect in perpetuity Functional Habitat and/or Corridors to generate Credits to mitigate for the impacts of Permanent Disturbances to sage-grouse habitat within Utah, must:

(i) own, manage and control at least 640 contiguous acres of land that is not Functional Habitat or Corridor(s) adjacent to Occupied Habitat in any SGMA in Utah, as identified by the Plan;

(ii) file a completed application with the Department, which shall include:

(A) the name and address of property owner;

(B) legal description and number of acres included in the proposed Bank Property;

(C) title search of property identifying current owner(s) and title holder(s) and a list of any existing liens on the property;

(D) list of any mineral owners of the property and a mineral title report if a split estate is involved;

_____ (E) name and address of Bank Manager;

_____ (F) a proposed property management plan, including identified Credit Generation Projects and monitoring and maintenance activities to take place on the bank; and

_____ (iii) Pay the applicable Application Fee as outlined in the Fee Schedule attached hereto, as amended by the Department.

_____ (b) The Department may reject any bank application that is incomplete or does not meet the requirements of this Section.

_____ (3) Establishment of Conservation Bank Agreement.

_____ (a) The Department may review any completed application and determine whether the property identified in the application may be eligible to operate as a Conservation Bank.

_____ (b) The Department will consult with the concerned county government and other appropriate agencies before approving the application.

_____ (c) Upon review and informal approval of the application, the Department will provide a written notice of contingent bank approval to the applicant and shall identify the total number of Credits potentially available on the property upon completion of any Credit Generation Projects.

_____ (i) No split-estate property shall receive informal approval unless the applicant provides a mineral report and written guarantee from the owner(s) of the mineral estate that mineral owners, or their lessees or assigns, will not occupy or disturb the surface in any way for mineral exploration or development while the Conservation Bank Agreement is in place. Such written guarantee shall be recorded, and shall run with the land and be binding on successors and assigns of the mineral owner for the term of the Agreement.

_____ (d) After the applicant receives the notice of contingent bank approval, the applicant and the Department may enter into a Conservation Bank Agreement which will, at a minimum, identify:

_____ (i) the Bank Manager;

_____ (ii) the legal description of the Bank Property;

_____ (iii) a property management plan identifying any habitat enhancement and maintenance activities to be conducted by Bank Manager to generate Credits on the Bank Property;

_____ (iv) the Bank Manager's monitoring and reporting requirements and schedule;

_____ (v) any Remedial Actions and adaptive management strategies to be taken in case of a Reversal;

_____ (vi) the amount and type of legal or financial assurances the Bank Manager provides for the conservation and maintenance of the Conservation Bank and Credits;

_____ (vii) a means by which the bank or bank property may be transferred to a third party; and

_____ (e) Prior to executing the Conservation Bank Agreement or transferring Credits on the Credit Exchange Service, the owner of the Conservation Bank shall grant a Conservation Easement to any eligible third-party, a deed restriction, or place the property in an irrevocable trust ensuring the perpetual protection of the property for the benefit of sage-grouse and the protection of sage-grouse habitat.

_____ (f) The Conservation Bank Agreement may be implemented in phases, as needed and appropriate, to generate and sell Credits on a periodic basis, and may be modified or amended by mutual agreement between the Bank and the Department.

_____ (g) The Department shall collect an Agreement Fee from the person(s) signing the Agreement to offset any costs of administering the Term Mitigation Agreement.

_____ (4) Credit Generation Projects.

_____ (a) Prior to initiating any Credit Generation Projects, the Bank Manager or the Department will survey the Project Area to verify the number of acres of existing Functional Habitat or Corridors present and report the survey results to the Department.

_____ (b) Once the Conservation Bank Agreement is fully executed by all parties and the survey results in subsection (1) are reported to the Department, the Bank Manager may begin Credit Generation Projects to generate Credits utilizing the plans and procedures identified in the Conservation Bank Agreement. The Bank Manager shall provide written notification to the Department whenever Credit Generation Projects are completed on the Bank Property.

_____ (5) Verification and Tracking Credits.

_____ (a) Upon completion of any Credit Generation Projects, as identified in the Conservation Bank Agreement, a Verifier will inspect the Credit Generation Project area to determine the number of acres of Functional Habitat or Corridor that exist on the Bank Property using the scientific methods approved or developed by the Department. When the Verifier determines that Functional Habitat or Corridors exist following Credit Generation Projects, the Verifier will provide a Certificate of Credits to the Bank Manager identifying the number of Credits available on the property to be potentially transferred to a Credit Buyer through the Credit Exchange Service.

_____ (b) Upon Verifying the Credits, the Department will track the Credits on the Credit Exchange Service as identified in Section 3-7(1).

_____ (6) Management and Monitoring Duties.

_____ (a) The Bank Manager shall manage the Bank Property in accordance with the management plans prescribed in the Conservation Bank Agreement.

_____ (b) The Bank Manager shall be responsible for monitoring and maintaining the condition of the Credits on the Bank Property and shall collect data as prescribed in the Conservation Bank Agreement, in accordance with the Department's Monitoring and Credit Maintenance policies and procedures.

_____ (c) The Bank Manager or a designee will submit an annual assessment and monitoring report to the Department utilizing the reporting guidelines developed by the Department.

_____ (7) Conservation Bank Agreement Revisions.

_____ (a) The Bank Manager and the Department shall meet and confer upon request of the other to consider revisions to the Conservation Bank Agreement which may be necessary to better conserve the habitat and conservation values of the Bank Property.

_____ (8) Compliance Inspection.

_____ (a) The Department may conduct any necessary assessment, monitoring and verification of the Bank Property to Verify that Credits generated by the Bank qualify as Functional Habitat or Corridor(s); to recommend Remedial Action, as needed; or for any other purpose determined necessary by the Department to assess compliance with the Conservation Bank Agreement.

_____ (b) In the event the Department or any person terminates the Term Mitigation Agreement prior to the terms outlined in the

agreement, the person providing the Credit Generation Project shall pay the Department the its actual costs to obtain or create replacement Credits to complete the remaining years listed in the agreement.

R634-3-7. Administration.

The Compensatory Mitigation Program and associated systems to generate and track Credits shall be administered by the Department.

(1) Credit Exchange Service.

(a) The Department shall monitor and track generated and transferred Credits using the Credit Exchange Service which will include the following information:

(i) Credits. Upon Completion of any Credit Generation Project, the Department will track:

(A) the number of Credits generated under each mitigation system herein;

(B) the dates the Credits were Verified and certified by the Department or a trained Verifier;

(C) the types of Habitat(s) created by the Credit(s), if the information is available;

(D) the name and address of each Credit Provider; and

(E) the duration or term for maintaining a Credit.

(ii) Transferred Credits. The Department will track information relating to each Transferred Credit including:

(A) name of Credit Buyer;

(B) the number of Credits transferred to the Credit Buyer;

(C) date of transfer;

(D) duration and term the Credit Expires, if applicable.

(iii) Expiration of Credits. If the term of a Credit or Transferred Credit expires, then the Department will remove the Credit or Transferred Credit from the tracking system, and notify the Buyer of the Credit, the Credit Provider and the involved regulatory agency, if applicable, that the Credit has expired.

(2) Procedure for Transferring Credits.

(a) A Credit Buyer may negotiate the acquisition price for a Credit with any Credit Provider listed on the Credit Exchange Service.

(b) Once an agreement on price is finalized between the Credit Provider and Credit Buyer, the Credit Provider shall notify the Department within 7 days.

(c) Once the Department receives notice of the agreement from a Credit Provider, the Department will send the Credit Buyer an invoice identifying the Credit Transfer Fee to be paid by the Credit Buyer to the Department.

(d) The Credit Buyer shall pay the Credit Transfer Fee to the Department within 30 days of the Department sending the invoice. Upon receipt of the Credit Transfer Fee, the Department will transfer the agreed upon Credits to the Credit Buyer.

(e) The Department shall track Credits transferred to any Credit Buyer using the Credit Exchange Service.

(f) Any Credit Buyer may purchase additional Credits to offset future planned development projects anticipated to cause a Permanent Disturbance to sage-grouse habitat.

(g) Once a Credit Buyer acquires a Transferred Credit, the Transferred Credit may not be transferred or sold to any other person or entity.

(3) Fee Schedule.

(a) The Department will annually develop a fee schedule to cover the cost of the Compensatory Mitigation Program and submit to the Legislature, including:

(i) The Application Fee required to cover the cost of processing any compensatory mitigation applications submitted to the Department from a potential Credit Provider.

(ii) The Agreement Fee, which will outline the costs of administering Term Mitigation Agreements and Conservation Banking Agreements

(iii) The Credit Transfer Fee to be paid by the Credit Buyer to offset the operation and maintenance costs of the Credit Exchange Service.

(4) Verification and Monitoring Guidelines; Certification.

(a) All Credits must be certified by the Department or by a Verifier prior to being tracked and transferred on the Credit Exchange Service to ensure that Credits represent Functional Habitat or useable Corridors for sage-grouse.

(b) Upon completion of any Credit Generation Project, the Department, or a Verifier, will visit the Project Area, utilize the Departments monitoring and assessment guidelines to determine the number of acres of Functional Habitat or Corridors of new habitat to calculate available Credits, and provide the Credit Provider with Certificate of Credits identifying the number of Credits available to be transferred on the Credit Exchange Service. The Verifier will also submit a verification report to the Program Administrator, together with a copy of the Certificate of Credits. Verifiers may also be utilized by the Department to monitor the long-term viability of Credits.

(c) The Department will accredit any person interested in serving as a Verifier. Accreditation will occur after a person attends a verification training provided by the Department, or a designee, and after a person demonstrates proficiency implementing the Department's monitoring and assessment guidelines.

(d) Verifiers will act as a designee to the Program Administrator to Certify Credits upon completion of any Credit Generation Projects.

(e) Upon completion of any property verification activities, the Verifier will provide a written Verification report to the Program Administrator identifying a summary of the verification activities, summary of the number of acres of Functional Habitat or Corridors in the Credit Generation Project area and an estimate of the number of Credits available, and a copy of the Certificate of Credits. The Department may add additional criteria to the report needed to carry out this rule.

(5) Monitoring and Assessment Guidelines; Scientific Method.

(a) The Credit Provider, or a designee, is responsible for monitoring and maintaining Credits utilizing the methods identified by the Department throughout the lifetime of the Credit to ensure that each Credit serves as viable Functional Habitat or Corridors for sage-grouse.

(b) The Department, and any trained Verifier, will utilize existing range trend monitoring guidelines or other scientifically approved methods identified by the Department to identify Credit Maintenance activities to be undertaken by a Credit Provider or their designee.

(c) The Department's monitoring and assessment guidelines will be reviewed, at a minimum, every three years to

ensure they are consistent with current scientific literature and methods.

(6) Reserve Pool.

(a) All Credits generated by the Department will be maintained on the Credit Exchange Service to serve as a reserve pool to off-set losses from Reversals to any Credits generated under this Program.

(7) Adaptive Management.

(a) The DNR will monitor compensatory mitigation efforts and employ new scientific findings into this Compensatory Mitigation Program, as such information becomes available.

KEY: sage-grouse, mitigation, Compensatory Mitigation Program

Date of Enactment or Last Substantive Amendment: 2018

Authorizing and Implemented or Interpreted Law: 79-2-501

**Public Service Commission,
Administration
R746-409-1
General Provisions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42331

FILED: 11/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed amendment is to update the date of the referenced U.S. Department of Transportation pipeline safety regulations from 09/01/2015 to 09/01/2017.

SUMMARY OF THE RULE OR CHANGE: Currently, Rule R746-409 adopts the federal pipeline safety regulations codified in 49 CFR Parts 190, 191, 192, 198, and 199 effective 09/01/2015. This rule change updates the amendment date from 09/01/2015 to 09/01/2017. There are no substantive changes between the 09/01/2015 and 09/01/2017 amendment dates. The changes are summarized as follows: Part 190 -- miscellaneous changes to Pipeline Safety enforcement and regulatory procedures; Part 191 -- miscellaneous changes to Pipeline Safety Regulations on reporting of annual reports, incident reports, and safety related condition reports; Part 192 -- miscellaneous changes to Pipeline Safety Regulations such as: expansion of use of Excess Flow Valves on new commercial and large volume customer services, operator qualification, cost recovery, accident and incident notification, and other Pipeline Safety changes and is a cost recovery procedure for the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) for review of special permits, construction over \$2,500,000, and operator qualification plan and procedures; Part 198 -- provides a

procedure for how a state with an inadequate damage prevention enforcement program may seek reconsideration by PHMSA; and Part 199 -- addresses operator qualification, cost recovery, accident and incident notification, and other Pipeline Safety changes and is a cost recovery procedure for PHMSA.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-13-3 and Section 54-13-5 and Section 54-13-6

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates 49 CFR Part 199, published by Government Printing Office, 09/01/2017
- ◆ Updates 49 CFR Part 190, published by Government Printing Office, 09/01/2017
- ◆ Updates 49 CFR Part 191, published by Government Printing Office, 09/01/2017
- ◆ Updates 49 CFR Part 192, published by Government Printing Office, 09/01/2017
- ◆ Updates 49 CFR Part 198, published by Government Printing Office, 09/01/2017

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The proposed rule change should not result in any costs to the state because the Division of Public Utilities mainly enforces pipeline safety rules and the amendment reflects current requirements.
- ◆ LOCAL GOVERNMENTS: This rule applies to natural gas public utilities operated by local governments. Since local governments are already expected to operate pursuant to federal regulations and state requirements incorporated or formalized in this rule change, no anticipated costs are expected.
- ◆ SMALL BUSINESSES: This rule applies to operators of natural gas master meter systems and pipeline facilities. Since small businesses are already expected to operate pursuant to federal regulations and state requirements incorporated or formalized in this rule change, no anticipated costs are expected.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since persons are already expected to operate pursuant to federal regulations and state requirements incorporated or formalized in this rule change, no anticipated costs are expected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons are not expected because this rule change follows practices and requirements already in place at the federal and state level.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule change adopts and formalizes current operating requirements, therefore, the proposed rule amendment will not result in any additional costs to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2018

AUTHORIZED BY: Melanie Reif, Legal Counsel

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, ~~2015~~2017:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;
2. Part 191;
3. Part 192;
4. Part 198; and
5. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards.

KEY: rules and procedures, safety, pipelines
Date of Enactment or Last Substantive Amendment: ~~March 30, 2016~~2018
Notice of Continuation: March 31, 2016
Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

R746. Public Service Commission, Administration.
R746-409. Pipeline Safety.
R746-409-1. General Provisions.
A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Regents (Board of), University of Utah, Commuter Services

R810-1

University of Utah Parking Regulations

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 42311

FILED: 11/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to reenact an expired rule. This rule defines regulations regarding vehicles, owners/operators, parking areas, and restrictions on the University of Utah campus.

SUMMARY OF THE RULE OR CHANGE: This filing reenacts an expired rule that defines regulations regarding vehicles, owners/operators, parking areas, and restrictions on the University of Utah campus.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-3-103 and Section 53B-3-107

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: The absence of this rule removes authorization of Commuter Services to implement parking regulations, issue citations, enforce and implement fire lane and ADA parking regulations, as well as define and restrict access allowed on University property. Reenactment will allow Commuter Services to continue with operations including issuing citations, impounding vehicles, and other means of regulation and restriction to University Property. The rule is still being enforced for compliance related to ADA and safety regulations on campus.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget as this rule filing just reenacts the expired rule.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments as this rule filing just reenacts the expired rule.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses as this rule filing just reenacts the expired rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to other persons as this rule filing just reenacts the expired rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons as this rule filing just reenacts the expired rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on any businesses because this rule filing just reenacts the expired rule.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

EFFECTIVE: 11/08/2017

AUTHORIZED BY: David Pershing, President

R810. Regents (Board of), University of Utah, Commuter Services.

R810-1. University of Utah Parking Regulations.

R810-1-1. Authority.

The University's parking system is authorized by Utah Code, Title 53B, Chapter 3, Sections 103 and 107.

R810-1-2. Motor Vehicle Parking On Campus.

A motor vehicle is defined under Utah State Code, Unannotated 41-1a-102(66).

A vehicle is defined under Utah State Code, Unannotated 41-1a-102(65).

Anyone parking a vehicle on campus must purchase a parking permit from Commuter Services and register the vehicle(s) license plate(s) to the permit purchased, or park the vehicle in a metered or pay area and pay the appropriate fee. Payment for the use of campus meters or pay areas is required whether or not the vehicle is associated to a valid University of Utah parking permit. If a physical permit is distributed, it must be displayed and clearly visible from the front windshield.

R810-1-3. Parking Areas.

Parking is permitted only in designated areas and only in accordance with all posted signs. Vehicles must be parked properly within marked stalls. Tickets are issued to vehicles parked contrary to posted signs.

R810-1-4. Restrictions.

Parking is prohibited 24 hours daily at red curbs, no parking areas, bus zones, crosswalks, driveways, and in front of fire hydrants and dumpsters.

R810-1-5. Vehicle Operator Responsibilities.

Parking area designations are subject to change, and it is the motorist's responsibility to be cognizant of such changes. The responsibility for finding an authorized parking space rests with the motor vehicle operator.

A vehicle must be parked in a valid parking stall so that the vehicle's license plate is clearly visible from the roadway from which the vehicle pulled into the stall. It is the motorist's responsibility to assure that the vehicle's license plate is visible and clear of debris.

R810-1-6. Parking for Drivers with Disabilities.

Parking for drivers with disabilities is reserved for students, faculty, staff and visitors who must purchase and display a parking permit or park in a metered area or pay lot and pay the appropriate fee.

R810-1-8. University Vehicle Parking.

University owned vans, trucks, and SUV's involved in maintenance must park in maintenance stalls when available. University owned sedans may not park in maintenance stalls. All University owned vehicles may park in U or E permitted stalls but are prohibited from parking in No Parking, Tow Away, Disabled or Reserved areas, or metered loading zones. University owned vehicles parking at non loading zone meters are limited to the maximum time listed on the meter. Pay by phone limitation is two hours; visitor pay lot limitation is one hour and "A" permit stall limitation is for loading and unloading only. Drivers of improperly parked University vehicles will be responsible for tickets received.

R810-1-9. Motorcycle Parking.

Drivers of motorcycles, motorbikes, scooters and mopeds must purchase a parking permit from Commuter Services and register the license plate(s) number(s) to the permit purchased.

R810-1-11. University Student Apartments Parking.

University Student Apartment parking lots are restricted to apartment residents, housing employees, resident's guests, apartment applicants and visitors.

Parking is permitted only in designated areas in accordance with all posted signs.

Residents and employees must purchase a housing parking permit and register all vehicle (including motorcycle, scooter, and moped) license plates to the permit.

R810-1-12. Extended Parking Privileges.

Vehicles occupying the same lot or stall for 48 hours or longer may be removed at the owner's expense if the vehicle interferes with regular University functions or maintenance. Vehicles parked in the residence halls are exempted from the 48 hour limitations.

R810-1-13. Abandoned Vehicles.

Vehicles that have not been moved for a period of seven days will be considered as abandoned and may be removed from University property at the owner's expense.

R810-1-14. Living In A Motor Vehicle On Campus.

Campers, trailers, motor homes or other vehicles may not be used for sleeping or living purposes on campus unless parked in areas designated by Commuter Services as RV parking.

R810-1-15. University Responsibility For Vehicle Damage.

The University is not responsible for the care and protection of or damage to any vehicle or its contents when operated or parked on University property. The purchase of a parking permit shall constitute an acknowledgement and acceptance of this condition as the privilege to use the University's parking facilities.

R810-1-16. Special Parking.

Commuter Services may change the designated use of lots or roadways at any time. During events, Commuter Services may charge additional fees for the use of University parking lots.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: 2018

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

**Regents (Board of), University of Utah,
Commuter Services
R810-8
Vendor Regulations**

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 42312
FILED: 11/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to reenact an expired rule. This rule defines regulations regarding vehicles, owners/operators, parking areas, and restrictions on the University of Utah campus.

SUMMARY OF THE RULE OR CHANGE: This filing reenacts an expired rule that defines regulations regarding vehicles, owners/operators, parking areas, and restrictions on the University of Utah campus.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-3-103 and Section 53B-3-107

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: The absence of this rule removes authorization of Commuter Services to enforce vendor regulations, and stipulate the requirements for parking. Reenactment will allow Commuter Services to continue with operations including issuing citations, and restricting access by permit to University Property. The rule is still being enforced for compliance related to ADA and safety regulations on campus.

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget as this rule filing just reenacts the expired rule.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments as this rule filing just reenacts the expired rule.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses as this rule filing just reenacts the expired rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to other persons as this rule filing just reenacts the expired rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as this rule filing just reenacts the expired rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on any businesses because this rule filing just reenacts the expired rule.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

EFFECTIVE: 11/08/2017

AUTHORIZED BY: David Pershing, President

R810. Regents (Board of), University of Utah, Commuter Services.

R810-8. Vendor Regulations.

R810-8-1. Parking Options for Vendors and Sales Representatives.

Vendors and sales representatives may:

A. Purchase a vendor permit from Commuter Services.

B. Purchase a day pass.

C. Park at a meter or pay area and pay the appropriate fee.

1. Vendors are required to obey University parking regulations.

2. Departments being served by vendors may not exempt vendors from parking regulations.

3. Vendor permits are limited to business use only and may not be used to attend classes or for all-day parking.

4. University of Utah employees may not use departmental vendor permits in lieu of a University of Utah parking permit. A University employee's vehicle displaying a departmental vendor permit must also have a parking permit from Commuter Services.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: 2018

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <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.

Education, Administration **R277-469** Instructional Materials Commission Operating Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42303
FILED: 11/06/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Section 53A-14-101 directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board; and Section 53A-14-107 directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Mountain State Schoolbook Depository submitted a comment with recommended amendments to the rule's language on depository requirements.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-469 continues to be necessary because it provides definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools; provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law; and provides rules for purchase and distribution of instructional materials within the state. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov
♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

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

EFFECTIVE: 11/06/2017

Education, Administration **R277-515** Utah Educator Professional Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42304
 FILED: 11/06/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) directs the Utah State Board of Education (Board) to make rules regarding the certification of educators; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written 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: Rule R277-515 continues to be necessary because it establishes statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov
- ◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

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

EFFECTIVE: 11/06/2017

Health, Administration

R380-50

Local Health Department Funding Allocation Formula

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42300
 FILED: 11/02/2017

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: The Utah Department of Health is required to establish, by rule, a formula for allocating funds by contract to local health departments. This rule is established under the authority of Section 26A-1-116.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the procedures and funding parameters that will be utilized when allocating funds to each local health department. This rule also has established a baseline amount for each local health department, voting requirements, as well as additional factors to be considered. By having a written requirement, funding can be distributed as equitably as possible. The overall amount to be distributed to the local health departments is established by the Utah State Legislature each year during the annual session, as part of the Utah Department of Health budget. The funding formula is then used to make the individual calculations. Therefore, this rule should be continued.

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

HEALTH
 ADMINISTRATION
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Tamara Hampton by phone at 801-538-6622, by FAX at 801-538-6306, or by Internet E-mail at thampton@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/02/2017

**Health, Disease Control and
Prevention, Health Promotion
R384-202**

**Traumatic Spinal Cord and Brain Injury
Rehabilitation Fund**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42330
FILED: 11/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule was enacted to establish procedure for the Fund Advisory Committee to follow in recommending the distribution of money from the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund to assist qualified IRC 501(c)(3) charitable clinics in providing the services designated in Title 26, Chapter 54, services such as physical, occupational and speech therapy, as well as equipment necessary for daily living activities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Traumatic Spinal Cord and Brain Injury Fund continues to receive funding. This rule is necessary to continue to establish procedures for the Fund Advisory Committee to annually review and establish criteria for recommending distribution of funding to charitable clinics that provide services, and the requests for funding applications process, development of the guidance, as well as the review, evaluation, recommendation and funding award process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
HEALTH PROMOTION

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:

♦ Trisha Keller by phone at 801-538-6865, by FAX at 801-538-9134, or by Internet E-mail at trishakeller@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/15/2017

**Health, Disease Control and
Prevention, Epidemiology
R386-705**

**Epidemiology, Health Care Associated
Infection**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42329
FILED: 11/15/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The authorizing statute listed in Rule R386-705 is Section 26-6-31. Rules for the Center for Medicare and Medicaid Services (CMS) require reporting of healthcare associated infections to the National Healthcare Safety Network (NHSN) from healthcare facilities that receive CMS funding. Section 26-6-31 requires: 1) Utah facilities to give the Utah Department of Health (Department) access to data reported to NHSN as required by CMS; and 2) the Department to prepare and publish an annual report of this data.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R386-705 is recommended as access to NHSN data submitted by facilities allows the Department to support facilities in reporting

accurate data through validation activities and the provision of resources regarding surveillance, definitions, and reporting requirements. The annual report prepared and published by the Department, as required by Rule R386-705, identifies facilities whose data is included in the report to provide data transparency and support collaborative activities among facilities to support the implementation of evidence-based infection prevention strategies. The Department provides a draft report to all facilities included in the report in order to review the data for accuracy and completeness prior to the public release of the report.

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:

♦ Melissa Stevens Dimond by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/15/2017

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-22
Administrative Sanction Procedures
and Regulations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42318
FILED: 11/09/2017

**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 26-18-3(6) requires the Department of Health (Department) to provide disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the Medicaid program. Further, 42 CFR 455 requires the Department to investigate fraud, and if necessary, to impose sanctions against providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it provides the Department and the Provider Sanction Committee discretionary authority to sanction providers for current and past misconduct, thereby promoting quality and integrity within the Medicaid 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: 11/09/2017

**Insurance, Administration
R590-265
Hazardous Financial Condition Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42299
FILED: 11/02/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-27-503(1)(a)(v) authorizes the Insurance Commissioner to take action whenever an insurer is determined to be in a hazardous financial condition or a potentially hazardous financial condition. Subsection 31A-27a-101(3)(c) authorizes

the Insurance Commissioner to align the definition of "hazardous financial condition" with definitions set forth in the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

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 no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule comprises a national standard set by the National Association of Insurance Commissioners (NAIC). The rule must be continued for the Utah Insurance Department to maintain its accreditation status. It sets forth standards the Commissioner may use to identify insurers that may be in a hazardous financial condition, which protects policyholders, creditors, and the general public from potential default. It also shows insurers the standards that are indicative of a hazardous financial condition and can help them avoid such a condition.

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: 11/02/2017

**Labor Commission, Boiler and Elevator
Safety
R616-1
Coal, Gilsonite, or other Hydrocarbon
Mining Certification**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42302
FILED: 11/03/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-1-104 gives the Labor Commission authority to establish rules to administer and enforce all laws for the protection of the life, health, and safety of employees. Section 40-2-401 authorizes the Commission to certify individuals involved in coal, gilsonite, or other hydrocarbon mining pursuant to rules established by the Commission.

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 during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the Commission's continuing certification of individuals involved in Utah's coal, gilsonite or other hydrocarbon mining industries, continuation of this rule remains necessary. The Commission has received no comments in opposition to this rule.

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

LABOR COMMISSION
BOILER AND ELEVATOR SAFETY
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:

◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov

◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 11/03/2017

**Money Management Council,
Administration
R628-18
Conditions and Procedures for Use of
Interest Rate Contracts**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42301
 FILED: 11/03/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Subsection 51-7-17(3) and allows public entities to enter into investment rate contracts that meet the requirements in council rule. Under Subsection 51-7-18(2)(x), the council is given rule writing authority for providing the conditions and procedures for the use of investment rate contracts by public entities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments either supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Under Subsection 51-7-17(3), public entities are allowed to enter into investment rate contracts per council rule. In order to allow public entities to use investment contracts in a safe and consistent manner this rule has to be in place. Additionally, there are several public entities that are utilizing investment rate contracts. Because of the use of the instrument, this rule needs to be in place. Therefore, this rule should be continued. Council has reviewed the rule in its monthly meeting and found that it is current and is being utilized and no comments were received in that meeting.

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

MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 ROOM 180 UTAH STATE CAPITOL COMPLEX
 350 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov
 ♦ Marina Scott by phone at 801-535-6565, or by Internet E-mail at marina.scott@slcgov.com

AUTHORIZED BY: Marina Scott, Chair

EFFECTIVE: 11/03/2017

Public Service Commission,
 Administration

R746-200

Residential Utility Service Rules for
 Electric, Gas, Water, and Sewer
 Utilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42305
 FILED: 11/06/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-1 authorizes the Public Service Commission (Commission) to regulate every public utility in Utah and supervise the business of those public utilities necessary to accomplish that regulation and supervision. Section 54-4-7 requires that the Commission provide rules to ensure that utility services and equipment are just, reasonable, safe, proper, and adequate. Sections 54-7-25 and R746-200-10 allows penalties to be imposed against public utilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Prior to filing the proposed amendment on 04/09/2013, the Commission held a meeting on 02/04/2013 to review comments regarding Section R746-200-7. AARP, Crossroads Urban Center, Division of Public Utilities (Division), Office of Consumer Services (Office), Rocky Mountain Power (RMP), and Questar (QGC) urged the Commission to take a cautious approach while amending the rule. All parties suggested focusing on goals providing transparency and clear communication to the public. They also suggested language changes to Section R746-200-7. The amendment, DAR No. 37508, was submitted on 04/09/2013 proposing termination of utility service in situations involving medical issues be updated and clarified. The rule change: 1) added definitions; 2) codified some current practice; 3) clarified a distinction between situations involving a "serious illness or infirmity" and those involving, the "life-supporting equipment"; and 4) outlined the procedures and restrictions on termination of utility service in both situations. The Division submitted comments agreeing with the amendment submitted, but made one suggestion to clarify certain language. The Division recommended the amendments to Rule R746-200 be approved upon the effective change to Subsection R746-200-7(D)(1)(b). QGC submitted comments proposing language changes to

Subsection R746-200-7(D)(2)(h) adding the period of service be included throughout. RMP submitted comments proposing the amended Subsection R746-200-7(A)(3) be revised to require a written statement signed by the licensed medical provider, and including the required information previously identified in Subsections R746-200-7(A)(2), R746-200-7(A)(3), and R746-200-7(D)(2). DAR No. 37508, a Change in the Proposed Rule, was submitted on 07/30/2013, no comments were submitted. DAR No. 38644, an amendment, was submitted on 06/23/2014. This proposed amendment clarified the rights of customers and the responsibilities of public utilities, and maintains oversight by both the Division and the Commission through the existing and unchanged informal and formal complaint process. RMP thanked the Commission for the opportunity to provide comments to the proposed amendment. No other comments were received. DAR No. 39246, an amendment was submitted on 03/30/2015. This proposed amendment was designed to provide affected customers with the same right to request a hearing while eliminating some of the paperwork and filing requirements. AARP submitted comments and voiced concerns of changing current procedures of disconnecting service. Elimination of requiring notice to the customer from the Commission was concerning to AARP. AARP supported continuing this policy. The Office recommended the Commission proceed with housekeeping modifications and reconsider the importance of the Division's role in the termination process. RMP thanked the Commission for the opportunity to provide comments and expressed that the proposed rule establishes a reasonable timeframe for notice. The Division explained their process of notifying customers since the rule was modified and the certified mail process. DAR No. 40472, an amendment, was submitted on 06/08/2016. The purpose of this amendment was to clarify the requirements that must be met before a public utility may terminate service to a customer. RMP appreciated the opportunity to provide comments and supported amending rules regarding the noticing requirements for proposed termination of service in homes with life support equipment. DAR No. 41337, an amendment, was submitted on 03/02/2017. The purpose of this proposed amendment was to update the rule to allow utilities to send the initial required notice of termination by electronic mail to those customers who opted into the utilities' paperless electronic billing system. No comments were received from this amendment.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Commission must continue to regulate every public utility in Utah, and provide rules to ensure that utility services and equipment are just, reasonable, safe, proper, and adequate. Rule R746-200 establishes and enforces utility residential service practices and procedures such as eligibility, deposits, account billing, deferred payment agreements, termination, review of consumer complaints, and penalties. Therefore this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 11/06/2017

**Public Service Commission,
Administration
R746-343
Rule for Deaf, Severely Hearing or
Speech Impaired Person**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42310
FILED: 11/07/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-8b-10, which requires the Public Service Commission (Commission) to exercise its rulemaking powers to establish a program to provide telephone service to certified deaf, severely hearing impaired, or speech impaired persons.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: An amendment, DAR No. 40685, was submitted on 08/18/2016 which created a pilot program to explore using current technology and devices and how such technology and devices might be adopted. An amendment, DAR No. 41645, was submitted on 05/12/2017 to comply with S.B. 130, which was passed during the 2017 General Session, which required the program for deaf, hard of hearing, and severely speech impaired persons be funded

from the Utah Universal Public Telecommunications Service Support Fund (UUSF) rather than through a separate, dedicated surcharge. No comments were received from either of these amendments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it establishes eligibility requirements and sets forth the procedure for approval of an application and the distribution process for telecommunication devices for the certified deaf, severely hearing or speech impaired. This rule provides instructions for training, replacement of equipment, ownership and liability, and out-of-state use. The rule also sets forth the liability of the telephone relay center and confidentiality and privacy requirements. This rule is also necessary to comply with provisions in the American with Disabilities Act (ADA) and Federal Communications Commission (FCC) regulations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SERVICE COMMISSION
 ADMINISTRATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
 ♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 11/07/2017

Public Service Commission,
 Administration
R746-346
 Operator-Assisted Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 42308
 FILED: 11/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-8b-13 requires that

the Public Service Commission (Commission) establish rules to implement requirements for operator-assisted 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: No comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 54-8b-13 continues to require this rule. This rule ensures that customers of operator-assisted services are informed of rates, surcharges, and terms or conditions of using operator-assisted services. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SERVICE COMMISSION
 ADMINISTRATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
 ♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 11/07/2017

Public Service Commission,
 Administration
R746-356
 Intrastate (IntraLATA) Equal Access To
 Toll Calling Services By
 Telecommunications Carriers

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 42307
 FILED: 11/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Subsection 54-8b-2.2(3) requires that the Public Service Commission (Commission) to establish rules. 47 U.S.C. Section 271(e)(2) requires implementation of intraLATA equal access for Bell Operating Company interLATA service offerings. 47 U.S.C. Section 251(b)(3), requires all local exchange carriers (LECs) to provide intraLATA equal access when requested by the Commission or the Federal Communications Commission (FCC) certified telecommunications corporations or common carrier, or when the LEC commences providing in-region or interstate interLATA toll service to its customers, with some exceptions as defined in 47 U.S.C. Section 251(f).

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 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 54-8b-2.2(3) requirements continue to authorize this rule. This rule establishes procedures and methods by which all Commission certified LECs will provide and maintain equal access, and customer

dialing parity, to intraLATA toll services when requested by one or more Commission or FCC certified telecommunications corporations, or common carriers. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SERVICE COMMISSION
 ADMINISTRATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
 ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 11/07/2017

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Agriculture and Food

Marketing and Development

No. 42033 (NEW): R65-13. Utah's Own

Published: 09/15/2017

Effective: 11/02/2017

Commerce

Occupational and Professional Licensing

No. 42082 (AMD): R156-26a. Certified Public Accountant

Licensing Act Rule

Published: 10/01/2017

Effective: 11/07/2017

No. 42086 (AMD): R156-55a. Utah Construction Trades

Licensing Act Rule

Published: 10/01/2017

Effective: 11/07/2017

Education

Administration

No. 42116 (AMD): R277-108. Annual Assurance of

Compliance by Local School Boards

Published: 10/01/2017

Effective: 11/07/2017

No. 42117 (AMD): R277-420. Aiding Financially Distressed

School Districts

Published: 10/01/2017

Effective: 11/07/2017

No. 42104 (AMD): R277-422. State Supported Voted Local

Levy, Board Local Levy and Reading Improvement Program

Published: 10/01/2017

Effective: 11/07/2017

No. 42098 (REP): R277-423. Delivery of Flow Through

Money

Published: 10/01/2017

Effective: 11/07/2017

No. 42118 (AMD): R277-424. Indirect Costs for State

Programs

Published: 10/01/2017

Effective: 11/07/2017

No. 42119 (AMD): R277-426. Definition of Private and Non-

Profit Schools for Federal Program Services

Published: 10/01/2017

Effective: 11/07/2017

No. 42120 (AMD): R277-474. School Instruction and Human
Sexuality

Published: 10/01/2017

Effective: 11/07/2017

No. 42121 (AMD): R277-502. Educator Licensing and Data
Retention

Published: 10/01/2017

Effective: 11/07/2017

No. 42122 (AMD): R277-509. Licensure of Student Teachers
and Interns

Published: 10/01/2017

Effective: 11/07/2017

No. 42123 (AMD): R277-522. Entry Years Enhancements

(EYE) for Quality Teaching - Level 1 Utah Teachers

Published: 10/01/2017

Effective: 11/07/2017

NOTICES OF RULE EFFECTIVE DATES

Environmental Quality

Drinking Water

No. 42075 (AMD): R309-100. Administration: Drinking Water Program
Published: 10/01/2017
Effective: 11/08/2017

No. 42076 (AMD): R309-105-6. Construction of Public Drinking Water Facilities
Published: 10/01/2017
Effective: 11/08/2017

No. 42077 (AMD): R309-110-4. Definitions
Published: 10/01/2017
Effective: 11/08/2017

No. 42058 (AMD): R309-300. Certification Rules for Water Supply Operators
Published: 09/15/2017
Effective: 11/09/2017

No. 42052 (AMD): R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements
Published: 09/15/2017
Effective: 11/07/2017

No. 42056 (AMD): R309-600-8. DWSP Plan Review
Published: 09/15/2017
Effective: 11/06/2017

No. 42057 (AMD): R309-605-7. Drinking Water Source Protection (DWSP) for Surface Sources
Published: 09/15/2017
Effective: 11/06/2017

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 42049 (REP): R414-99. Chiropractic Services
Published: 09/15/2017
Effective: 11/09/2017

Human Services

Substance Abuse and Mental Health

No. 42042 (NEW): R523-15. Drug Testing Requirements
Published: 09/15/2017
Effective: 11/08/2017

Recovery Services

No. 42100 (AMD): R527-231. Review and Adjustment of Child Support Order
Published: 10/01/2017
Effective: 11/07/2017

Regents (Board Of)

Administration

No. 42073 (NEW): R765-613. Public Safety Officer Career Advancement Reimbursement Program
Published: 10/01/2017
Effective: 11/10/2017

Tax Commission

Administration

No. 42101 (AMD): R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401
Published: 10/01/2017
Effective: 11/09/2017

Property Tax

No. 42102 (AMD): R884-24P-33. 2017 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301
Published: 10/01/2017
Effective: 11/09/2017

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 November 15, 2017. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

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>Administration</u>					
R13-3	Americans with Disabilities Act Grievance Procedures	42202	5YR	10/10/2017	2017-21/213
<u>Archives</u>					
R17-5	Definitions of Rules in Title R17	42271	5YR	10/27/2017	2017-22/101
R17-6	Records Storage and Disposal at the State Records Center	42272	5YR	10/27/2017	2017-22/101
R17-7	Archival Records Care and Access at the State Archives	42270	5YR	10/27/2017	2017-22/102
R17-8	Application of Microfilm Standards	42273	5YR	10/27/2017	2017-22/102
<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
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R746-110-3	Rate Increases	41670	NSC	06/05/2017	Not Printed
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R746-200-7	Termination of Service	41337	AMD	05/15/2017	2017-7/59
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R746-310	Uniform Rules Governing Electricity Service by Electric Utilities	41672	NSC	06/05/2017	Not Printed
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R746-313	Electric Service Reliability	41514	5YR	04/27/2017	2017-10/175
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R746-320	Uniform Rules Governing Natural Gas Service	41676	NSC	06/13/2017	Not Printed
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R994-404	Payment Following Workers' Compensation	41686	5YR	05/19/2017	2017-12/42
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
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	42270	R17-7	5YR	10/27/2017	2017-22/102
	42273	R17-8	5YR	10/27/2017	2017-22/102
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	41376	R21-2	5YR	03/17/2017	2017-8/59
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	42267	R305-7	5YR	10/26/2017	2017-22/103
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	41157	R70-560	5YR	01/12/2017	2017-3/85
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	41031	R746-341	CPR	03/24/2017	2017-4/54
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