

# UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Environmental Quality Air Quality

### Logan Moderate PM2.5 SIP NNSR Demonstration and Ammonia Sensitivity Analysis for the Logan Nonattainment Area

The Utah Division of Air Quality (DAQ) has committed, in a letter to the EPA, to address certain elements required of the State Implementation Plan submitted by DAQ for the Logan, UT-ID PM2.5 nonattainment area. Among these elements is a technical demonstration that ammonia need not be considered as a PM2.5 precursor for purposes of nonattainment new source review. In this demonstration, DAQ modeled the sensitivity of the air-shed to two hypothetical point sources of ammonia near the Federal Reference Method (FRM) monitor in Logan, Utah. The ammonia was added to gauge how sensitive PM2.5 concentrations in Cache Valley would be due to potentially large industrial sources that could begin future operations in the area. Currently, there are no planned or existing major sources in the Logan nonattainment area that encompasses Cache Valley. Cache Valley is highly ammonia rich due to the multitude of animal agricultural operations in the region.

*DAQ is seeking public comment on this demonstration, which can be viewed at the following website <https://deq.utah.gov/NewsNotices/notices/air/Pubrule.htm>. The public comment period goes from 12/15/17 through 01/15/18.*

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Notice for January 2018 Medicaid Rate Changes

Effective January 1, 2018, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

**End of the Special Notices Section**



# EXECUTIVE DOCUMENTS

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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.

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## Creating a Community Development Block Grant Program Board, Utah Exec. Order No. 2017-9

### EXECUTIVE ORDER

#### Creating a Community Development Block Grant Program Board

**WHEREAS**, the State of Utah administers the Small Cities Community Development Block Grant (CDBG) Program in accordance with the Housing and Community Development Act of 1974 as found in 24 CFR 570;

**WHEREAS**, to achieve the goals of the State of Utah's CDBG Program, it is important to involve local governments at the policy making level; and

**WHEREAS**, it is in the best interest of the federal, state and local governments to advocate, facilitate, and promote the coordination and cooperation among all government agencies for the common well being of those of low and moderate income in the State of Utah.

**NOW, THEREFORE, I**, Gary R. Herbert, Governor of the State of Utah, by the authority vested in me by the Constitution and the laws of this State do hereby establish the CDBG Board of the State of Utah and order as follows:

1. The purpose of the CDBG Board shall be as follows:

- a. To function as the official policy-making body for the CDBG Program for the non- entitlement areas of the state;
- b. To act as a public participation forum to identify public attitudes, desires, needs and priorities within the seven regions of the state so that they can be reflected within the framework of the CDBG Program;
- c. To assist in the preparation and adoption of the annual "Utah Community Development Block Grant Application Policies and Procedures" and the "Utah Community Development Block Grant Grantee Handbook," which document the Method of Distribution and program guidance; and
- d. To serve as a communication channel and to promote positive relationships between the CDBG Program staff and all levels of local government.

2. Membership.

a. The CDBG Board shall consist of seven members. The members of the Board shall be appointed by the Governor from a list of two names submitted by the chair of each of the respective seven associations of governments listed below, after executive board action.

b. The seven regions which shall have representatives on the Board are:

Bear River Association of Governments;  
Five County Association of Governments;  
Six County Association of Governments;  
Mountainland Association of Governments;  
Uintah Basin Association of Governments;  
Southeastern Utah Association of Local Governments; and  
Wasatch Front Regional Council

c. Each member must be an elected official and a member of the Regional Review Committee constituted at the association of governments level;

d. Members shall be appointed to serve four year terms. The terms shall be staggered so that, if reasonably possible, no more than two members shall complete a term each year;

e. If a member resigns or is removed before completing a term, a new member shall be appointed for a new four year term;

f. Members may serve no more than two four year terms; and

g. The Governor may remove board members for cause.

3. The CDBG Board shall develop and adopt by-laws, consistent with this Executive Order, for the purposes of organization and administration of the CDBG Board and Program.

4. This order replaces and supersedes the executive order executed by Governor Norman H. Bangerter on November 1, 1985, "To create a Small Cities' Community Development Block Grant Policy Committee of the State of Utah."

IN WITNESS WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 15th day of November, 2017.

(State Seal)

**Gary R. Herbert**  
Governor

**Spencer J. Cox**  
Lieutenant Governor

2017/009/EO



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**Repealing the Recording Policy Review Board, Utah Exec. Order No. 2017-10**

## EXECUTIVE ORDER

## Repealing the Recording Policy Review Board

**WHEREAS**, as Governor of the Great State of Utah, I am endowed with the constitutional and statutory authority to direct the business of the State of Utah;

**WHEREAS**, from time to time, the Governor is required to issue executive orders in times of emergency or to conduct the business of the state in an efficient manner, protect the people of the state, and direct the actions of executive employees and agencies;

**WHEREAS**, prior Governors issued orders that have completed their purpose, have become unnecessary, or have been replaced by subsequent orders, state law or federal statutes;

**WHEREAS**, on January 27, 1993, Governor Michael O. Leavitt issued an order creating a Recording Policy Review Board consisting of the Attorney General and the Governor's General Counsel to recommend policies regard the taping and recording of communications between state employees, officers, and others persons as needed;

**WHEREAS**, the purposes for Recording Policy Review Board no longer exist; and

**WHEREAS**, the Recording Policy Review Board has not had need to convene in a considerable period:

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by the authority vested in me by the Constitution and laws of the State, do hereby rescind the Executive Order issued by Governor Michael O. Leavitt on January 27, 1993, creating the Recording Policy Review Board.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, on this, the 21st day of November, 2017.

(State Seal)

**Gary R. Herbert**  
Governor

Attest:

**Spencer J. Cox**  
Lieutenant Governor

2017/010/EO

**End of the Executive Documents Section**



## NOTICES OF PROPOSED RULES

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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 16, 2017, 12:00 a.m., and December 01, 2017, 11:59 p.m. are included in this, the December 15, 2017, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 16, 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 April 14, 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.

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

**Administrative Services, Facilities  
Construction and Management  
R23-5  
Contingency Funds**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42347

FILED: 11/29/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule establishes policies and procedures regarding contingency funds held by the Division. It also provides guidelines for the source, use, and reporting of contingency funds as provided in Title 63A, Chapter 5.

**SUMMARY OF THE RULE OR CHANGE:** This amendment is to correct statutory references in Sections R23-5-2 and R23-5-3 and correct a typo in the Section R23-5-4. Subsection R23-5-6(2)(e) is also removed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-5-209

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Subsection R23-5-6(2)(e) is redundant and already addressed in Subsection R23-5-6(1).
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments. Subsection R23-5-6(2)(e) is redundant and already addressed in Subsection R23-5-6(1).
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. Subsection R23-5-6(2)(e) is redundant and already addressed in Subsection R23-5-6(1).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Subsection R23-5-6(2)(e) is redundant and already addressed in Subsection R23-5-6(1).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance costs for affected persons as Subsection R23-5-6(2)(e) is redundant and already addressed in Subsection R23-5-6(1).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact that this rule may have on businesses. Subsection R23-5-6(2)(e) is redundant and already addressed in Subsection R23-5-6(1).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
ROOM 4110 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at [cniederhauser@utah.gov](mailto:cniederhauser@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ned Carnahan, Building Board Chair

**R23. Administrative Services, Facilities Construction and Management.**

**R23-5. Contingency Funds.**

**R23-5-1. Purpose.**

(1) This rule establishes policies and procedures regarding contingency funds held by the Division.

(2) It provides guidelines for the source, use and reporting of contingency funds as provided in Title 63A, Chapter 5.

**R23-5-2. Authority.**

This rule is authorized under Subsection 63A-5-103([1]2) ([e]a), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

**R23-5-3. Definitions.**

(1) "Appropriated Funds" means funds appropriated to the Division for capital projects to be administered by the Division. This includes state funds such as the General Fund as well as proceeds from state General Obligation Bonds.

(2) "Board" means the State Building Board established under Title 63A, Chapter 5, Part 1.

(3) "Division" means the Division of Facilities Construction and Management established under Title 63A, Chapter 5, Part 2.

(4) "Non-appropriated Funds" means any funds which are provided for a project which are not Appropriated Funds.

(5) "Project Reserve" means the account provided for in Subsection 63A-5-209 ([2]3).

(6) "Statewide Contingency Reserve" means the account provided for in Subsection 63A-5-209(1)(c).

**R23-5-4. Applicability.**

(1) The provisions of this rule shall apply to all projects or portions of projects funded through Appropriated Funds.

(2) The provisions of this rule may be waived to the extent necessary in order to comply with specific requirements associated with the project funds such as specific legislative direction or requirements associated with state revenue bonds.

#### **R23-5-5. General Provisions.**

(1) The balances in the Statewide Contingency Reserve and the Project Reserve may be redirected to other purposes by the Legislature.

(2) New projects may not be initiated from the Statewide Contingency Reserve nor from the Project Reserve unless authorized by the Legislature. This prohibition does not apply to remedial work associated with previously authorized and completed projects.

(3) The Division may utilize any number of subaccounts required to maintain separate accounting of Appropriated Funds as required by the source of the funds.

#### **R23-5-6. Funding of Statewide Contingency Reserve.**

(1) All Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve upon their receipt by the Division. This includes budget elements previously referred to as "design contingency" and "project contingency."

(2) The Division shall budget for contingencies based upon a sliding scale percentage of the construction cost.

(a) For new construction, the sliding scale shall range from 4-1/2% to 6-1/2%.

(b) For remodeling projects, the sliding scale shall range from 6% to 9-1/2%.

(c) The sliding scale shall be approved by the Board and kept on file by the Division.

(d) When projects are funded from both Appropriated Funds and Non-appropriated Funds, the amount budgeted for contingencies shall be prorated so that only that portion associated with the Appropriated Funds' share of the project is transferred to the Statewide Contingency Reserve.

~~(e) Any remaining balance as of July 1, 1993 of Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve as provided in this rule.]~~

#### **R23-5-7. Use of Statewide Contingency Reserve.**

(1) The Statewide Contingency Reserve may provide additional funding to a project when:

(a) necessary construction costs arise on projects after the construction has been bid;

(b) costs for other elements of a project exceed the amount budgeted; or

(c) necessary costs arise which were not budgeted for.

(2) As previously directed by the Legislature, unbudgeted costs included in Subsection R23-5-6(1)(c) may include legal services, insurance, surveys, testing and inspection, and bidding costs.

(3) The Statewide Contingency Reserve may be used to fund changes in scope only if the scope change is necessary for the proper functioning of the program that was provided for in the approved project scope. The Division shall take steps as necessary to minimize the utilization of the Statewide Contingency Reserve for scope changes.

(4) With the prior approval of the Board, the Statewide Contingency Reserve may be used to fund unanticipated costs on projects funded through Non-appropriated Funds.

#### **R23-5-8. Funding of Project Reserve.**

(1) After all major construction contracts for a project have been awarded, and after setting aside adequate reserves for any remaining construction work which was not included in the construction contracts, any remaining balance of Appropriated Funds in the construction budget shall be transferred to the Project Reserve.

(2) Upon completion of the project, any residual balance of Appropriated Funds in any budget category shall be transferred to the Project Reserve; however, if the residual balance is the result of a reduction in a contract balance which had previously been funded from the Statewide Contingency Reserve, the residual balance shall be transferred instead to the Statewide Contingency Reserve.

#### **R23-5-9. Use of Project Reserve.**

The Division may utilize the Project Reserve only for the award of construction contracts which exceed the available construction budget. This may only be done after a review of other options to bring the cost within available funding and a determination that this action is necessary in order to meet the intent of the project.

#### **R23-5-10. Reporting Requirements.**

(1) The five-year building plan published annually by the Board shall include a summary report on the Statewide Contingency Reserve and the Project Reserve. This report shall include information on each Reserve summarized as follows for the most recently completed fiscal year:

(a) beginning balance;

(b) increases and decreases by type; and

(c) ending balance.

(2) At least annually, the Division shall analyze the balance in each Reserve and the projected needs based on already approved projects and determine if the balance is in excess of or less than the projected need. The results of this analysis shall be reported to the Legislature in its regular session.

(3) The Division shall report regularly to the Board on the status of the Statewide Contingency Reserve and the Project Reserve.

**KEY: buildings, contingency fund[\*]**

**Date of Enactment or Last Substantive Amendment: [1994]2018**

**Notice of Continuation: November 14, 2012**

**Authorizing, and Implemented or Interpreted Law: 63A-5-209 et seq.**

## Administrative Services, Facilities Construction and Management **R23-9** Cooperation with Local Government Planning

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42348

FILED: 11/29/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.

**SUMMARY OF THE RULE OR CHANGE:** This amendment makes statutory citation corrections and removes Subsections R23-9-3(2), (2)(a), and (2)(b).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-5-103 and Section 63A-5-206

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget. The changes to this rule only remove who the exemption does not apply to, as otherwise provided by law.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local governments. The changes to this rule only remove who the exemption does not apply to, as otherwise provided by law.
- ◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses. The changes to this rule only remove who the exemption does not apply to, as otherwise provided by law.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to this rule only remove who the exemption does not apply to, as otherwise provided by law.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The changes to this rule only remove who the exemption does not apply to, as otherwise provided by law.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no fiscal impacts that this rule may have on business. The changes to this rule only remove who the exemption does not apply to, as otherwise provided by law.

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

ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
ROOM 4110 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ned Carnahan, Building Board Chair

**R23. Administrative Services, Facilities Construction and Management.**

**R23-9. Cooperation with Local Government Planning.**

**R23-9-1. Purpose and Authority.**

(1) This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

(3) The statutory provisions that set forth the relationship between the planning and zoning authority of local governments and the construction of facilities on state property are contained in Section 63A-5-206.

**R23-9-2. Definitions.**

(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(3) "Local government" means a "municipality" as defined in Section 10-[9]1-10[3]4 or a "county" as defined in Section 17-[27]50-10[3]1.

(4) "State property" means land owned by the State of Utah and any department, division, agency, institution, commission, board, or other administrative unit of the State of Utah; including but not limited to, the division, the State Building Ownership Authority, and state institutions of higher education.

**R23-9-3. Exemption from Local Government Planning and Zoning Authority.**

[+] As provided for in Section 63A-5-206, Section 10-9a-[+]30[5]4, and Section 17-27a-[+]304[.5], construction on state property is not subject to the planning and zoning authority of local governments regardless of what entity will own or occupy the resulting facility. Construction on state property is not subject to local government building permit requirements, or plan reviews.

[2] ~~This exemption does not apply to the business regulation authority of local governments except as follows:~~

~~(a) Any requirement to comply with the local government's planning or zoning ordinance in order to receive a business license or similar business permit shall be deemed to have been met through the division's determination of siting and design requirements.~~

~~(b) As otherwise provided by law.]~~

**R23-9-4. Consideration of Local Government Planning.**

(1) When determining the location and design of facilities to be constructed on state property, the division shall consider input

received from local governments and, as appropriate, local government planning and zoning requirements that would apply if the property were not owned by the state. This may include discussions with local government planning officials and/or a review of some or all of the following local government documents:

- (a) master plan;
- (b) zoning ordinance; and
- (c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.

(2) In any dispute regarding departures from local government requirements, the final determination shall be made by the director.

**R23-9-5. Additional Requirements for Secured Facilities.**

In addition to the requirements of this rule, the director shall comply with the requirements of Subsection 63A-5-206(12) regarding notice and hearings for projects involving diagnostic, treatment, parole, probation, or other secured facilities.

**KEY: construction, planning, zoning**

**Date of Enactment or Last Substantive Amendment: March 24, 2003**

**Notice of Continuation: November 14, 2012**

**Authorizing, and Implemented or Interpreted Law: 63A-5-103; 63A-5-206**

**Commerce, Occupational and  
 Professional Licensing  
 R156-72  
 Acupuncture Licensing Act Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42338

FILED: 11/21/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Acupuncture Licensing Board recommends these proposed amendments to clarify certain terms and ensure that the definitions in the Acupuncture Licensing Act Rule encompass existing acupuncture methods and techniques already practiced in the profession.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R156-72-102(1), the proposed amendments make minor formatting changes for clarification. Subsection R156-72-102(4) is a new subsection that clarifies the terms "herbs" and "homeopathics" used in Subsection 58-72-102(4)(b)(ii), by giving the following non-exclusive list of herbs and homeopathic substances that may be recommended, administered, or provided: vitamins, minerals, amino acids, proteins, and enzymes. Subsection R156-72-102(5) is

amended to more clearly define "insertion of acupuncture needles" in the practice of acupuncture, by including "myofascial" trigger point therapy, "intramuscular therapy", and "proprioceptive stimulation". The changes in Subsection R156-72-102(6) clarify that the National Commission for the Certification of Acupuncture and Oriental Medicine (NCCAOM) was formerly known as the National Commission for the Certification of Acupuncturists. In Section R156-72-302a, the proposed amendment deletes the reference to NCCAOM's former name as it is now included in the definition under Subsection R156-72-102(6).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-72-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These proposed amendments only make minor formatting changes for clarification, and ensure that the definitions in the rule encompass existing acupuncture methods and techniques already practiced in the profession. Accordingly, the proposed amendments will not cause any party to experience a cost or benefit, and will not change the price or quantity of any exchanges between any parties. As a result, this rule is not expected to impact the state, beyond a minimal cost to the Division of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** These proposed amendments only make minor formatting changes for clarification, and ensure that the definitions in the rule encompass existing acupuncture methods and techniques already practiced in the profession. Accordingly, the proposed amendments will not cause any party to experience a cost or benefit, and will not change the price or quantity of any exchanges between any parties. As a result, this rule is not expected to impact local governments.

◆ **SMALL BUSINESSES:** These proposed amendments only make minor formatting changes for clarification, and ensure that the definitions in the rule encompass existing acupuncture methods and techniques already practiced in the profession. Accordingly, the proposed amendments will not cause any party to experience a cost or benefit, and will not change the price or quantity of any exchanges between any parties. As a result, this rule is not expected to impact small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments only make minor formatting changes for clarification, and ensure that the definitions in the rule encompass existing acupuncture methods and techniques already practiced in the profession. Accordingly, the proposed amendments will not cause any party to experience a cost or benefit, and will not change the price or quantity of any exchanges between any parties. As a result, this rule is not expected to impact other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments only make minor formatting changes and clarifications to the existing rule and do not impose any additional compliance cost on any affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These proposed amendments only make minor formatting changes for clarification, and ensure that the definitions in the rule encompass existing acupuncture methods and techniques already practiced in the profession. Accordingly, these amendments will not cause any party to experience any cost or benefit, and will not change the price or quantity of any exchanges between any parties. These rule amendments are not expected to impact small or non-small businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 COMMERCE  
 OCCUPATIONAL AND PROFESSIONAL  
 LICENSING  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018**

**AUTHORIZED BY: Mark Steinagel, Director**

**Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses**

	FY 2018	FY 2019	FY 2020
<b>Fiscal Costs</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0.00	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	\$0	\$0	\$0

<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits:</b>	\$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.

Small businesses: The proposed rule amendments are not expected to impact small businesses.

Non-small businesses: The proposed rule amendments are not expected to impact non-small businesses.

**R156. Commerce, Occupational and Professional Licensing.**

**R156-72. Acupuncture Licensing Act Rule.**

**R156-72-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 72, as used in this rule:

(1)(a) "Administration", as used in Subsection 58-72-102(4)(b)(ii), means the direct application of an herb, homeopathic, or supplement to the body of a patient by:

- (i) ingestion[;];
- (ii) topical application[;];
- (iii) inhalation[;]; or
- (iv) acupoint injection therapy (AIT)[~~to the body of a~~

~~patient].~~

(b) Administration does not include:

- (i) venous injections[;];
- (ii) immunizations[;];
- (iii) legend drugs; or
- (iv) [~~and~~]controlled substances.

(2) "Controlled substance" means a drug or substance [as defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(32) and (64).

(4) "Herbs" and "homeopathics", as used in Subsection 58-72-102(4)(b)(ii), may include:

- (a) vitamins;
- (b) minerals;
- (c) amino acids;
- (d) proteins; and
- (e) enzymes.

([4]5) "Insertion of acupuncture needles" means a procedure of acupuncture and oriental medicine which includes [~~but is not limited to~~] myofascial trigger point therapy, intramuscular



therapy, proprioceptive stimulation, Ahshi points, and dry needling techniques.

[(5)6] "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine (formerly known as the National Commission for the Certification of Acupuncturists (NCCA).

[(6)7] "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.

[(7)8] "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).

**R156-72-302a. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM [~~formerly National Commission for the Certification of Acupuncturists (NCCA);~~] in acupuncture or oriental medicine.

**KEY: acupuncture, licensing**

**Date of Enactment or Last Substantive Amendment: [July 9, 2015]2018**

**Notice of Continuation: September 8, 2016**

**Authorizing, and Implemented or Interpreted Law: 58-72-101; 58-1-106(1)(a); 58-1-202(1)(a)**

**Governor, Criminal and Juvenile Justice (State Commission on)**

**R356-2-10**

**Evaluation Criteria**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42337

FILED: 11/20/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule establishes evaluation criteria of applicants for judicial office. This amendment includes three additional evaluation criteria.

**SUMMARY OF THE RULE OR CHANGE:** This amendment provides three additional evaluation criteria to be used by members of the judicial nominating commissions: 1) interest in, understanding of, and experience with issues facing children and families when evaluating applicants for juvenile court; 2) ability to give and receive criticism of opinions and arguments without taking offense when evaluating applicants for appellate courts; and 3) the background and experience of applicants in relation to the current composition of the bench

when applicants' qualifications appear comparable in other respects.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 78A-10-103

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment will likely not result in a cost or savings to the state budget. The rule is updated to clarify evaluation criteria.

◆ **LOCAL GOVERNMENTS:** This amendment will likely not result in a cost or savings to local governments. The rule is updated to clarify evaluation criteria.

◆ **SMALL BUSINESSES:** This amendment will likely not result in a cost or savings to small businesses. The rule is updated to clarify evaluation criteria.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The rule is updated to clarify evaluation criteria.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment will likely not result in compliance costs for affected persons. The rule is updated to clarify evaluation criteria.

**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 amendment would not result in a fiscal impact to businesses.

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

GOVERNOR  
CRIMINAL AND JUVENILE JUSTICE  
(STATE COMMISSION ON)  
ROOM SUITE 330 SENATE BUILDING  
STATE CAPITOL COMPLEX  
350 NORTH STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Holly Langton by phone at 801-538-1050, or by Internet E-mail at hlangton@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018**

**AUTHORIZED BY: Ronald Gordon, Executive Director**

**Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses**

	FY 2018	FY 2019	FY 2020
<b>Fiscal Costs</b>			
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
<b>Total Fiscal Costs:</b>	\$0	\$0	\$0
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits:</b>	\$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.

**R356. Governor, Criminal and Juvenile Justice (State Commission on).**

**R356-2. Judicial Nominating Commissions.**

**R356-2-10. Evaluation Criteria.**

(1) In addition to criteria established by the Utah Constitution and the Utah Code Annotated, commission members shall during the nomination process consider the applicants':

- (a) integrity;
- (b) legal knowledge and ability;
- (c) professional experience;
- (d) judicial temperament;
- (e) work ethic;
- (f) financial responsibility;
- (g) public service;
- (h) ability to perform the work of a judge; and
- (i) impartiality.

(2) When evaluating applicants for a juvenile court judge position, commission members shall consider the applicants' interest

in, understanding of, and experience with the issues and problems facing children and families.

(3) When evaluating applicants for an appellate court position, commission members shall consider the applicants' ability to give and receive criticism of opinions and arguments without taking offense.

(4) When deciding among applicants for any judicial position whose qualifications, taken as a whole, appear in all other respects to be comparable, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made.

(5) Unless otherwise provided by statute, members of trial court nominating commissions may not decline to interview an applicant or decline to nominate an applicant based primarily on the geographic location of the applicant's residence or the geographic location of the applicant's employment.

**KEY: judicial nominating commissions, judges**

**Date of Enactment or Last Substantive Amendment: [August 10, 2016]2018**

**Notice of Continuation: June 26, 2015**

**Authorizing, and Implemented or Interpreted Law: 78A-10-103(1)**

**Governor, Criminal and Juvenile Justice (State Commission on),  
 Indigent Defense Commission  
 R364-1  
 Conflicts of Interest for Indigent Defense Commission Members**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42351

FILED: 11/30/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish standards and procedures to identify and address potential conflicts of interest.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule establishes standards and procedures to identify and address potential conflicts of interest for members of the Indigent Defense Commission.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 77, Chapter 32, Part 8

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This proposed rule only applies to the actions of the individual members of the Indigent Defense Commission in their official capacity, and there are no costs

associated with the proposed rule. As a result, it is not anticipated that the proposed rule will have any impact on state government revenues or expenditures.

◆ LOCAL GOVERNMENTS: This proposed rule only applies to the actions of the individual members of the Indigent Defense Commission in their official capacity, and there are no costs associated with the proposed rule. As a result, it is not anticipated that the proposed rule will have any impact on local governments.

◆ SMALL BUSINESSES: This proposed rule only applies to the actions of the individual members of the Indigent Defense Commission in their official capacity, and there are no costs associated with the proposed rule. As a result, it is not anticipated that the proposed rule will have any impact on small businesses in Utah.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed rule only applies to the actions of the individual members of the Indigent Defense Commission in their official capacity, and there are no costs associated with the proposed rule. As a result, it is not anticipated that the proposed rule will have any impact on persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule only applies to the official actions of the individual members of the Indigent Defense Commission, as related to the identification and process to address potential conflicts of interest of members. As a result, it is not anticipated that the proposed rule will have any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 GOVERNOR  
 CRIMINAL AND JUVENILE JUSTICE  
 (STATE COMMISSION ON),  
 INDIGENT DEFENSE COMMISSION  
 370 E SOUTH TEMPLE, SUITE 500  
 SALT LAKE CITY, UT 84111  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Taylor Mosolf by phone at 801-839-4153, or by Internet E-mail at [taylormosolf@utah.gov](mailto:taylormosolf@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/24/2018

AUTHORIZED BY: Joanna Landau, 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	\$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 proposed rule only applies to the actions of individual members of the Indigent Defense Commission in their official capacity as commission members. As a result, there are no large businesses in Utah that will be impacted by the proposed rule.

**R364. Governor, Criminal and Juvenile Justice (State Commission on).**  
**R364-1. Conflicts of Interest for Indigent Defense Commission Members.**  
**R364-1-1. Authority.**  
This rule is authorized by Subsection 77-32-804(6).

**R364-1-2. Purpose.**

The purpose of this rule is to establish standards and procedures to identify and address potential conflicts of interest.

**R364-1-3. Definitions.**

As used in this rule, "commission" means the Utah Indigent Defense Commission created in Section 77-32-801.

**R364-1-4. Identifying a Conflict of Interest.**

A commission member has a potential conflict of interest with respect to a matter to be considered by the commission if:

(1) the commission member would be prohibited from participation under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act;

(2) the commission member's participation constitutes a violation of constitutional due process under the Utah or United States constitutions; or

(3) the matter relates to a financial or personal interest of the commission member or a person or entity closely associated with the commission member.

**R364-1-5. Procedures.**

(1) A commission member who has a potential conflict of interest with respect to a matter to be heard before the commission shall:

(a) fully disclose the conflict of interest to the commission at any commission meeting where the matter is to be discussed; and

(b) recuse himself or herself from voting on the matter.

(2) This rule does not preclude a commission member from participating in a discussion of the matter in the same manner as other individuals who provide input on the matter.

**KEY: conflict of interest, Utah Indigent Defense Commission**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented or Interpreted Law: Title 77, Chapter 32, Part 8**

## Health, Health Care Financing, Coverage and Reimbursement Policy

### R414-517

#### Inpatient Hospital Provider Assessments

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42353

FILED: 12/01/2017

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement provisions of the Inpatient Hospital Assessment Act (IHAA) set forth in Title 26, Chapter 36b.

SUMMARY OF THE RULE OR CHANGE: In accordance with Title 26, Chapter 36b, this amendment designates the rate methodology for non-state government hospital-intergovernmental transfers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Title 26, Chapter 36b

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no impact to the state budget because the Legislature has already appropriated funds to implement the IHAA. This amendment only designates rate methodology and does not create further costs or savings.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because the Legislature has already appropriated funds to implement the IHAA. This amendment only designates rate methodology and does not create further costs or savings.

♦ SMALL BUSINESSES: There is no impact to small businesses because the Legislature has already appropriated funds to implement the IHAA. This amendment only designates rate methodology, and neither creates further costs nor affects potential revenue.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because the Legislature has already appropriated funds to implement the IHAA. This amendment only designates rate methodology, and does not affect costs, savings, or potential revenue.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because the Legislature has already appropriated funds to implement the IHAA. This amendment only designates rate methodology, and does not affect costs, savings, or potential revenue.

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 amendment 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 01/16/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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**

None of the six non-state government-owned hospitals will see a fiscal impact in regard to this amendment because the Legislature has already allocated funds to implement this provision of the Inpatient Hospital Assessment Act, which requires designation of rate methodology and does not affect potential revenue or cost.

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

**R414-517. Inpatient Hospital Provider Assessments.**

**R414-517-1. Introduction and Authority.**

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36b.

**R414-517-2. Definitions.**

The definitions in Section 26-36b-103 apply to this rule.

**R414-517-3. Audit of Hospitals.**

(1) For hospitals that do not file a Medicare cost report for the time frames outlined in Section 26-36b-205, the Department of Health shall audit the hospital's records to determine the correct discharges for the assessment.

(2) Hospitals subject to the assessment shall make their records available for reasonable inspection upon written request from the Department. Failure to make the records available shall be considered non-compliance and subject the hospital to penalties set forth in Section R414-517-[5]6.

**R414-517-4. Change in Hospital Status.**

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36b-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

P.O. Box 143102

Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

288 North 1460 West

Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-517-4(1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment, as outlined in Section 26-36b-210, for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) For State Fiscal Year 2018 and subsequent years, the Department shall determine if new providers are eligible to receive payments as allowed under Section 26-36b-210. The new providers will also be subject to the assessment beginning that same state fiscal year as they become eligible to receive the payments as allowed under Section 26-36b-210. New providers identified will be added prospectively beginning with that new state fiscal year.

**R414-517-5. Intergovernmental Transfer Calculation and Schedule.**

The non-state government hospital-intergovernmental transfer, as specified in Title 26, Chapter 36b, shall be calculated at a uniform rate for each hospital discharge. The uniform rate shall be determined using the total number of hospital discharges for non-state government hospitals. Any quarterly changes to the uniform rate shall be applied uniformly to all non-state government hospitals.

**R414-517-[5]6. Penalties and Interest.**

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital that is required to file a Medicare cost report, but failed to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital five percent of the unpaid amount. The fine is payable within 30 days of invoice.

**R414-517-[6]7. Rule Repeal.**

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36b-211.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** [~~November 1, 2017~~]**2018**

**Authorizing, and Implemented or Interpreted Law:** **26-1-5; 26-18-3; 26-36b**

**Health, Family Health and  
Preparedness, Primary Care and Rural  
Health  
R434-150  
Adverse Events from the Administration  
of Sedation or Anesthesia; Recording  
and Reporting**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42334

FILED: 11/16/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish reporting requirements to the Utah Department of Health (Department) for anesthesia-related adverse events that occur in outpatient settings. The rule implements Section 26-1-40, which became effective 05/09/2017 because of H.B. 142 passed during the 2017 General Session, and requires reporting of adverse events starting 01/01/2018.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes a reporting database within the Department for anesthesia-related adverse events that occur in outpatient settings, as required by the relevant and governing statutes listed above. To implement the database and other requirements of statute, the rule also: 1) defines an adverse event, levels of sedation, near misses, and conditions under which escalation of care or rescue can be identified; 2) describes a level of harm scale; and 3) describes the data elements and formats of annual reports.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-40

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The anticipated cost to state government is \$30,000 per year based on 0.20 FTE for Patient Safety Director to meet with subject matter experts, develop set of regulations, publish regulations, respond to public comments and rewrite, design database, provide training and outreach to impacted provider groups, manage reporting function and database security, create annual reports and report to legislature findings. It is estimated that approximately 50 events might be reported on an annual basis from outpatient services. However, there is no way to determine the exact amount at this time.

♦ **LOCAL GOVERNMENTS:** There is no anticipated impact to local governments due to the fact that there are not likely to be any local government-owned clinics that are administering anesthesia.

♦ **SMALL BUSINESSES:** Total employers impacted is 1,750 clinics which are identified below. Small Businesses, under 621111, are: Individual physician's offices: direct fiscal costs; Small physician clinics: direct fiscal costs; Small dentists offices: direct fiscal costs; and Small group practices: direct fiscal costs. Non-small Businesses, under 621111, are: Individual physician's offices: Direct fiscal costs; Physician clinics: direct fiscal costs; Dentists offices: direct fiscal costs; and Group practices: direct fiscal costs.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The number of licensed practitioners potentially impacted are identified below. Although these requirements only apply to outpatient clinics, the Department cannot determine which of these practitioners are working inpatient verses outpatient, therefore all are counted: Section 58-5a-502, Podiatry Physicians, 228; Section 58-31b-502.5, Nurse Practice Act, 38,842; Section 58-67-502.5, Utah Medical Practice Act, 12,175; Section 58-68-502.5, Utah Osteopathic Medical Act, 972; and Section 502.5, Utah Dentist and Dental Hygiene Act, 6,279. This totals 58,496.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Small Businesses: 621111, 20 events per year at 30 minutes = 10 hours, \$200 per hour = \$2,000 per year. Non-small Businesses: 621111, 30 events per year at 30 minutes = 15 hours, 15 hours x \$200 per hour = \$3,000 per year.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Small and non-small businesses, that are medical care providers. who administer anesthesia in non-emergency department outpatient settings will be minimally impacted by the direct cost of reporting adverse events. I approve publication of this proposed new Rule R434-150.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
PRIMARY CARE AND RURAL HEALTH  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Iona Thraen by phone at 801-273-6643, by FAX at 801-273-4150, or by Internet E-mail at [ithraen@utah.gov](mailto:ithraen@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R434. Health, Family Health and Preparedness, Primary Care and Rural Health.**

**R434-150. Adverse Events from the Administration of Sedation or Anesthesia; Recording and Reporting.**

**R434-150-1. Purpose and Authority.**

(1) To establish reporting requirements to the Utah Department of Health Anesthesia Adverse Events Database that include:

- (a) the format of the reports; and
- (b) what constitutes a reportable adverse event.

**R434-150-2. Definitions.**

(1) **"Adverse event" means a reportable event that includes:**

- (a) the administration of sedation or anesthesia;
- (b) in an outpatient, non-emergency room setting;
- (c) that results in escalation of care, harm to, or rescue of the patient; and
- (d) while under the direct care of the provider at the facility or within 24 hours of discharge.

(2) "Department" means the Utah Department of Health.

(3) "Escalation of care or rescue of a patient" means rescuing a patient from levels of sedation deeper than intended in order to prevent harm or death to a patient. This may include the use of:

- (a) a rescue or reversal agent;
- (b) aborting a procedure secondary to complications of sedation or anaesthesia;
- (c) unplanned assisted airway management;
- (d) 911 call for Emergency Medical Services;
- (e) transfer to a higher level of care; or
- (f) any other intervention.

(4) "Harm scale" means a systematic method of designating a patient's level of harm that includes:

- (a) unsafe conditions;
- (b) near miss;
- (c) no harm;
- (d) additional monitoring or treatment to prevent harm;
- (e) temporary harm requiring intervention;
- (f) temporary harm requiring hospitalization;
- (g) permanent patient harm;
- (h) intervention to sustain life; or
- (i) patient death.

(5) "Healthcare Providers" means any healthcare provider who uses sedation or anaesthesia and is located in any outpatient location (e.g., office, urgent care, dentists, podiatrist, etc.) who is not currently required to report under Rule R380-200.

(6) "Levels of sedation" means physiologic states that are induced through the administration of medication by any route. Standards associated with differing levels of sedation are defined in the Centers for Medicare and Medicaid Conditions of Participation Interpretive Guidelines 482.51(b)(5) Interpretive Guidelines ([https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_a\\_hospitals.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf)).

These interpretive guidelines are the expected standards of practice, unless otherwise specified by the individual practitioner's scope of practice as defined in the Utah Licensure Practice Act and Title 58 of the Utah Code.

(7) "Near miss" means stopping or aborting a procedure for the safety of the patient due to the administration of anaesthesia or sedation.

(8) "Unprofessional Conduct" is defined in statute for each Utah Department of Professional licensure category. See Utah Code Sections 58-5a-502, 58-31b-502.5, 58-67-502.5, 58-68-502.5, and 58-69-502.5.

**R434-150-3. Anesthesia Adverse Event Database.**

(1) The Anesthesia Adverse Event Database is managed through the Department's anesthesia reporting system.

(2) The Department shall establish the event report format.

**R434-150-4. Event Reporting.**

(1) Once an adverse event has been determined by a licensed healthcare provider, and the provider(s) who administered the sedation or anesthesia involved in the event have been notified, the adverse event shall be reported to the Department within 72 hours.

(2) To report an event:

(a) The individual reporting the event must:

(i) register with the State of Utah to get a state ID; and

(ii) notify the program manager that they have registered.

(b) The program manager shall:

(a) verify the reporting registrant's Utah state ID; and

(b) give the reporting registrant access to report their case to the Anesthesia Adverse Event Database.

(3) The reporting individual shall submit the following data and information at the time of the report:

(a) The person who reports the event;

(b) The healthcare provider(s) and facility type who conducted the procedure;

(c) The healthcare provider(s) and facility type who administered the anesthesia;

(d) Description of the event;

(e) Description of the sedation used;

(f) Level of harm experienced;

(g) Patient demographics (birthdate, gender, and weight), to give context to the event;

(h) Surgical classification of the procedure, using American Society of Anesthesiologist physical status classification system;

(i) Description of rescue activities;

(j) Description of monitoring that took place;

(k) Description of escalation of care;

(l) Description of emergency equipment and supplies available at the time of the event; and

(m) Any additional or concluding remarks.

**R434-150-5. Confidentiality.**

(1) Information received and stored by the Department under this Rule may only be disclosed with Department approval under specific, enumerated conditions provided by Utah Code Section 26-3-7. Because of the public interest in fostering health care systems improvements, the Department is authorized Utah Code Section 26-3-8 to exercise its discretion to disclose information under those conditions.

(a) However, the Department shall not release information collected under this Rule to any person pursuant to the provisions of Subsections (1) or (8) of Section 26-3-7.

(2) Information provided by a facility to the Department under this Rule is privileged, as provided by Utah Code Title 26, Chapter 25, and is not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

**R434-150-6. Extensions and Waivers.**

(1) The Department may grant an extension of any reporting time requirement of this rule, if the facility demonstrates that:

(a) the delay is due to factors beyond its control,

(b) the delay will not adversely affect the purposes of this rule; or

(c) any other reason acceptable to the Department.

(2) A facility requesting a waiver shall submit its request to the Department representative prior to the deadline for the required action.

(3) The Department may grant a waiver of any other provision of this Rule if the facility demonstrates that the waiver will not adversely affect the Department's root cause analysis and the purposes of this Rule.

**R434-150-7. Annual Aggregate Reports.**

(1) The Department's Anesthesia Adverse Event Database program manager shall report the following information to the legislature and public annually:

(a) Number of deaths and adverse events;

(b) Distribution of provider types involved in events by license category and specialty;

(c) Types of facility where events occurred;

(d) Number of non-provider reports;

(e) Procedures being performed when events occurred; and

(f) An analysis of the impact of these reporting requirements in reducing adverse events.

**R434-150-8. Penalties.**

(1) As provided in Utah Code Section 26-23-6, an entity or person who violates any provision of this rule may be:

(a) assessed a civil penalty not to exceed \$10,000;

(b) subject to criminal prosecution for:

(i) a first violation as a class B misdemeanor;

(ii) each subsequent similar violation within two years of the first violation as class A misdemeanor; and

(c) reported to DOPL for investigation of unprofessional conduct.

**KEY: anesthesia adverse events, patient safety, sedation related events**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented or Interpreted Law: 26-1-40**

Health, Center for Health Data, Vital  
Records and Statistics

**R436-6**

Delayed Registration of Birth or Death



**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 42339

FILED: 11/22/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This filing repeals Rule R436-6 because it is unnecessary. Requirements for court-ordered delayed registration of birth and death are established in Section 26-2-15 and the rule repeats what is stated in the code.

**SUMMARY OF THE RULE OR CHANGE:** This rule is repealed in its entirety because it is unnecessary.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 2

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated savings or anticipated costs to the state budget with this rule filing as it only repeals a rule that repeats requirements already established in state statute.

◆ **LOCAL GOVERNMENTS:** There are no anticipated savings or anticipated costs to local governments with this rule filing as it only repeals a rule that repeats requirements already established in state statute.

◆ **SMALL BUSINESSES:** There are no anticipated savings or anticipated costs to small businesses with this rule filing as it only repeals a rule that repeats requirements already established in state statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated savings or anticipated costs to other persons with this rule filing as it only repeals a rule that repeats requirements already established in state statute.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs for affected persons with this rule filing as it only repeals a rule that repeats requirements already established in state statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated compliance costs for businesses with this rule filing as it only repeals a rule that repeats requirements already established in state statute.

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

HEALTH  
CENTER FOR HEALTH DATA,  
VITAL RECORDS AND STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
◆ Richard Oborn by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at roborn@utah.gov or mail at PO BOX 141012, Salt Lake City, UT, 84114-1012

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

**R436. Health, Center for Health Data, Vital Records and Statistics.**~~**[R436-6. Delayed Registration of Birth or Death.**~~~~**R436-6-1. Court Ordered Delayed Registration of Birth.**~~

~~When there is evidence that a live birth has occurred, but no birth certificate is on file or a certified copy of the birth certificate cannot be obtained, interested persons may petition for a court order establishing the date, time and place of birth. The petition shall be filed with the clerk of the district court in the county:~~

~~\_\_\_\_\_ (a) Where the birth is alleged to have occurred; or~~

~~\_\_\_\_\_ (b) Where the person whose birth it is sought to establish usually resides.~~

~~Persons who were not born in Utah and are not residents of Utah shall not qualify for birth certificate registration under this rule.~~

~~Residents of Utah, born outside of Utah and petitioning to register their birth under this rule, shall provide the court evidence that no birth certificate is on file at the place where they were born or that they are unable to obtain a certified copy of their birth certificate from the place where they were born.~~

~~Foreign born children who are becoming residents of Utah through adoption proceedings, and who have no original birth certificate on file or are unable to obtain a certified copy of their birth certificate, may have a court order delayed birth certificate registered in Utah. A court order establishing the date, time, and place of birth, should be obtained prior to the court order of adoption. However, the court order of adoption may include the findings of fact regarding the date and place of birth to meet this requirement.~~

~~Delayed registrations of birth filed under this rule shall show the actual place of birth, to the extent known, on the birth certificate filed with the State Registrar. This delayed registration shall carry no presumption of United States citizenship.~~

~~**R436-6-2. Court Ordered Delayed Registration of Death.**~~

~~When there is evidence that a death has occurred, but no death certificate is on file or a certified copy of the death certificate cannot be obtained, interested persons may petition for a court order establishing the fact, time, and place of death. The petition shall be filed with the clerk of the district court in the county:~~

~~\_\_\_\_\_ (a) Where the death is alleged to have occurred; or~~

~~\_\_\_\_\_ (b) Where the deceased usually resided at the date of the alleged death.~~

~~A death alleged to have occurred outside of Utah to a non-resident of Utah shall not qualify for death certificate registration under this rule.~~

~~KEY: vital statistics, court records, birth~~  
~~Date of Enactment or Last Substantive Amendment: 1989~~  
~~Notice of Continuation: December 3, 2012~~  
~~Authorizing, and Implemented or Interpreted Law: 26-2-15]~~

**Science Technology and Research  
 Governing Authority (Utah),  
 Administration  
 R856-1  
 USTAR Technology Acceleration  
 Program Grants**

**NOTICE OF PROPOSED RULE**  
 (Repeal and Reenact)  
 DAR FILE NO.: 42360  
 FILED: 12/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Technology Acceleration Program (TAP) grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**SUMMARY OF THE RULE OR CHANGE:** This rule describes the eligibility, reporting, and other criteria required for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for

evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **SMALL BUSINESSES:** The aggregate funding for this particular grant is up to \$4,500,000 per year. It is estimated to impact up to 40 companies that could be awarded funding per year. It is expected to have a cost savings for business. It is a grant program that provides businesses with funding to develop new technologies, saving them some of the costs to develop those technologies. USTAR is unable to estimate the exact cost savings, since it will vary given the award received by each company/project. Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual submitting the report.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
 I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** After conducting a thorough analysis, it was determined that this proposed rule is expected to have a cost savings for businesses. It is a grant program that provides businesses with funding to develop new technologies, saving them some of the costs to develop those technologies.  
 II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The aggregate funding for this particular grant is up to \$4,500,000 per year. It is estimated to impact up to 40 companies that could be awarded funding per year.  
 III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH**

EXPECTED TO BE IMPACTED: The small business that could be impacted would be the estimated up to 40 companies that could be awarded funding. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The company and university would receive funding from USTAR to offset the company's research and development costs. The total aggregate savings for businesses could be up to \$4,500,000 annually. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY (UTAH)  
ADMINISTRATION  
SUITE 550  
111 S MAIN  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ivy Estabrooke by phone at 801-538-8709, by FAX at 801-538-8881, or by Internet E-mail at iestabrooke@utah.gov  
◆ Justin Berry by phone at 801-538-8884, or by Internet E-mail at jberry@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-1. USTAR Technology Acceleration Program Grants.**

**[R856-1-1. Authority.**

(1) Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-1-2. Purpose and Goals.**

(1) The Technology Acceleration Program (TAP) provides funding and other support to Utah companies to accelerate

the research and development of new technologies that have a strong market potential.

(2) The goals of TAP are to:

(a) enhance Utah's innovation system by supporting the development, retention, and attraction of science and technology companies; and,

(b) accelerate the growth of high-potential technology companies, leading to the creation of high-paying science and technology jobs in Utah.

(3) Proposals will be reviewed on a competitive basis. All projects funded through TAP must have an identified market and/or commercialization path.

(4) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation.

**R856-1-3. Definitions.**

(1) "Applicant" means a company applying for a USTAR TAP Grant.

(2) "Awardee" means a company that has been awarded a TAP Grant.

(3) "Company" or "Companies" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher education institution; and,

(b) is represented by persons at least 18 years old.

(4) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.

(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.

(6) "TAP grant" means the competitive grants awarded as part of the USTAR Technology Acceleration Program.

(7) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grant funding as described in Subsection R856-1-4(1) below.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(9) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(10) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-1-4. Eligibility Criteria at Time of Application.**

(1) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted

technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

(A) statewide or regional importance of the industry to Utah's economy;

(B) relative size of the sector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,

(2) The company must be developing a technology assessed to be between a TRL of 3-5:

#### **R856-1-5. Eligibility Criteria at Time of Award and for Maintenance of Grant.**

(1) Company must meet the following size, revenue, and funding criteria:

(a) have fewer than 50 employees;

(b) have less than one million dollars in annual revenue; and

(c) not raised more than five million dollars in private funding, excluding non-dilutive funding.

(2) Company must be Utah-based.

(a) To be considered Utah-based, a company must:

(i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;

(ii) have a valid business license from the governing locality at the company's primary location;

(iii) have a substantial presence in the state of Utah;

(A) "substantial presence" means that at least 90% of company's employees are employed in the State of Utah;

(B) company must be approved by the USTAR governing authority according to R856-1-5(2) with consideration given at time of award.

(iv) maintain employees in Utah, which will require the company to provide a copy of its most recent reporting for unemployment insurance with the Utah Department of Workforce Services;

(v) maintain its principal place of business in Utah; and,

(vi) not relocate the company or substantial portions of its employees, operations, or management outside of the State of Utah.

(b) If a company does not meet the criteria in Subsection R856-1-5(1), or if it cannot be reasonably determined whether the company meets the criteria, the governing authority, in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:

(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(ii) whether the company is registered as a for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(iii) whether the company's principal place of business is Utah;

(iv) likelihood that the company will maintain a substantial presence in the state of Utah;

(v) whether the technology will be developed in Utah and how much will be based in Utah when it is completed; and,

(vi) degree to which the company's activities and operations positively impact Utah's economy.

#### **R856-1-6. Application and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website, and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application;

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) a breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-7 and R856-1-8 herein.

#### **R856-1-7. Application Review Procedure.**

(1) Initial eligibility screening:

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) strict conformity with application instructions;

(iii) verification of minimum eligibility requirements; and

(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-1-7(1) will be rejected and not considered for review.

(2) Panel review:

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-1-8.

(i) Each expert panel will consist of at least two technical subject-matter experts and one business or industry expert.

~~(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.~~

~~(iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~

~~(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~

~~(B) relevant work experience and practical training in the field;~~

~~(C) knowledge of the target industry sector in Utah;~~

~~(D) experience evaluating grant proposals;~~

~~(E) general investment experience; and,~~

~~(F) any other factors USTAR deems important.~~

~~(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated, using the conflict of interest policy on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).~~

~~(3) Governing authority review:~~

~~(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for TAP grants.~~

~~(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.~~

**R856-1-8. Evaluation and Award Criteria.**

~~(1) The panel of subject-matter experts will use an established scoring system to evaluate and rank grant applications and determine grant amounts:~~

~~(a) The scoring criteria will be made available during the application period.~~

~~(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~

~~(i) technical merit of proposal;~~

~~(ii) strength and experience of company and management team;~~

~~(iii) appropriate technology readiness level (TRL 3-5);~~

~~(iv) potential economic impact, as measured by:~~

~~(A) job creation;~~

~~(B) product sales;~~

~~(C) potential revenue due to expansion of current business or development of a new businesses; and, or,~~

~~(D) projected time to revenue or job creation;~~

~~(v) market need;~~

~~(vi) technical and management experience and qualifications;~~

~~(vii) commercialization strategy~~

~~(viii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;~~

~~(ix) reasonableness of proposed milestones;~~

~~(x) proposed timeline is achievable and will not exceed 18 months; and~~

~~(xi) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.~~

**R856-1-9. Grant Amount, Award, and Required Contract.**

~~(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each TAP based on available funds, scope of project, and quality of proposal.~~

~~(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.~~

~~(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a contract with USTAR governing the use of grant funding.~~

~~(4) Unless addressed in the terms and conditions of the contract between company and USTAR, the following provisions shall apply:~~

~~(a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;~~

~~(b) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,~~

~~(c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.~~

~~(5) Violations of Subsection R856-1-9(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the TAP grant.~~

**R856-1-10. Contract Modifications.**

~~(1) Company may request a modification to the terms of a TAP contract.~~

~~(2) USTAR may deny a modification request for any reason.~~

~~(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

~~(i) changes to milestone due dates, if the changes do not change the total length of the project;~~

~~(ii) corrections to clerical errors in the application materials;~~

~~(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law.~~

~~(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.~~

~~(4) Substantive changes must be approved by the USTAR governing authority.~~

~~(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.~~

**R856-1-11. Milestones.**

(1) TAP funding must be used to accelerate the research and development of a technology from TRL level 3 to 5 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the project may include:

- (a) research and development activities;
- (b) proof of concept;
- (c) product validation; and,
- (d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each TAP grant contract.

**R856-1-12. Funding Distribution.**

(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(2) Specific funding details will be provided in the program announcement and in each TAP grant contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-1-13. Reporting.**

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.]

**R856-1-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-1-2. Purpose and Goals.**

(1) USTAR's Technology Acceleration Program (TAP) provides grants and other support to assist start-ups and early stage companies to accelerate the development of a new technology.

(2) The goals of the program are to:

(a) enhance the state's innovation system by supporting the development, retention, and attraction of science and technology companies in Utah; and,

(b) accelerate the growth of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.

**R856-1-3. Definitions.**

(1) "Applicant" means a company applying for a USTAR TAP Grant.

(2) "Awardee" means a company that has been awarded a TAP Grant.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "Company" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.

(6) "TAP grant" means the competitive grant funding awarded and administered by USTAR under TAP.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grants using the selection criteria described in these rules.

(11) "USTAR" means the Utah Science, Technology, and Research Initiative.

**R856-1-4. Eligibility Criteria.**

(1) Company must be Utah-based.

(a) To be considered "Utah-based," a company must:

(i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;

(ii) maintain its principal place of business in Utah; and,

(iii) not relocate the business or substantial portions of its employees, operations, or management outside of the State of Utah.

(b) If a company does not meet the criteria in Subsection R856-1-4(1) above, or if it cannot be reasonably determined whether the company meets the criteria, the governing authority, in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:

(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(ii) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(iii) whether the company's principal place of business is Utah;

(iv) likelihood that the company will maintain a significant presence in the state of Utah; and,

(v) degree to which the company's activities and operations positively impact Utah's economy.

(2) Company must have fewer than 50 employees, less than \$1 million annual revenue and raised less than \$5 million in private capitol.

(3) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

(c) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

- (i) statewide or regional importance of the industry to Utah's economy;
  - (ii) relative size of the sector, its stability, and growth potential;
  - (iii) characteristics of the state's existing workforce, including education and training;
  - (iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;
  - (v) the potential for the industry sector to develop new jobs and business opportunities in the state; and,
  - (vi) Likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,
  - (vii) any other factor the governing authority deems relevant, considering the mission of USTAR and the purpose of TAP.
- (4) The company must be developing a technology assessed to be between a TRL of 3-5.
- (5) If the Company is a current recipient of a USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

**R856-1-5. Application Form and Submission Guidelines.**

- (1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.
- (2) The instructions will include the following:
  - (a) A general procedure for submitting an application;
  - (b) Requirements for a letter of intent;
  - (c) Instructions for application content which includes:
    - (i) description of the company's technology;
    - (ii) commercialization plan;
    - (iii) description of technical milestones and qualifications of team to meet milestones;
    - (iv) potential market;
    - (v) potential economic impact on Utah economy; and,
    - (vi) timeline for completion.
  - (d) Instructions for the required budget outline, including:
    - (i) total project cost;
    - (ii) a description of funds already secured for activities related to this project;
    - (iii) an itemized budget detailing planned use of grant funds; and,
    - (iv) breakdown of costs to complete each milestone.
  - (e) Description of the application evaluation process and scoring system.
  - (f) Instructions for reporting project results and completing annual follow-up surveys.
- (3) Completed applications must be received on or before the specified deadline in the application instructions.
- (4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-6 and R856-1-7 herein.

**R856-1-6. Application Review Procedure.**

- (1) Pre-screening
  - (a) Companies will submit a letter of intent before the specified deadline.

- (b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply based on this Rule and TAP policies. Only companies determined to be eligible may apply for TAP.
  - (2) Initial eligibility screening.
    - (a) USTAR will conduct an initial eligibility screening for each application to ensure:
      - (i) Completeness; and
      - (ii) Verification of minimum eligibility requirements.
    - (b) Any application that fails to meet the criteria in Section R856-1-6(2) will be rejected.
    - (3) Panel Review.
      - (a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-1-7.
        - (i) Each expert panel will consist of at least two technical expert one business expert
        - (v) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:
          - (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;
          - (B) relevant work experience and practical training in the field;
          - (C) knowledge of the target industry sector in Utah;
          - (D) experience evaluating grant proposals;
          - (E) any other factors USTAR deems important.
        - (vi) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.
      - (4) Governing authority review.
        - (a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.
        - (b) GA subcommittee will consider prior performance of applicant in evaluation
        - (c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.
- R856-1-7. Application Evaluation Criteria.**
- (1) Letter of Intent
    - (a) The administrative criteria to review letters of intent will be published in advance.
    - (2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.
      - (a) The scoring criteria will be made available during the application period.
      - (b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:
        - (i) technical merit of proposal;
        - (ii) strength and maturity of company and management;
        - (iii) potential for economic impact, as measured by:
          - (A) job creation;
          - (B) product sales;
          - (C) potential revenue due to expansion of current business or development of new businesses; and/or
          - (D) projected time to revenue or job creation;
        - (iv) Commercialization plan/ market need;

(v) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);

(vi) reasonableness of proposed milestones and timelines; and

(vii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) TAP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and

(d) product development.

#### **R856-1-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to determine the maximum amount of funding that may be awarded for each round of TAP based on available funds and quality of applicant pool.

(2) USTAR reserves the right to award funding for any application in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.

(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a written agreement with USTAR governing the use of TAP grant funding.

(4) Unless addressed in the terms and conditions of the written agreement between company and USTAR, the following provisions shall apply:

(a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;

(b) company may not use TAP grant funding to provide a primary benefit to any state other than Utah; and,

(c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-1-8(4) may result in the forfeiture of grant funding and may require repayment all or a portion of funds received as part of the TAP grant.

#### **R856-1-9. Contract Modifications.**

(1) Company may request a modification to the terms of a TAP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement.

#### **R856-1-10. Funding Distribution.**

(1) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after a TAP grant is approved to allow company to meet initial milestones.

(2) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(3) Specific funding details will be provided in the program announcement and in each TAP grant contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

#### **R856-1-11. Reporting.**

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

**KEY: Utah Science Technology and Research (USTAR), Technology Acceleration Program (TAP) grants, technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [~~August 15, 2017~~]2018**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

## Science Technology and Research Governing Authority (Utah), Administration

### **R856-2**

## USTAR University-Industry Partnership Program Grants

### **NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 42357

FILED: 12/01/2017

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for USTAR's second grant program, the USTAR University-Industry Partnership Program Grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a



description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR Industry Partnership Program Grants and describes the eligibility, reporting, and other criteria required for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific types of research projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **SMALL BUSINESSES:** It is expected to have a cost savings for business awarded grants as it is a grant program where businesses partner with universities to perform research and development on the development of new technologies. USTAR provides matching or shared funds to assist with the research and development. The grant funding for this particular grant is up to \$1,000,000 per year. It is estimated to impact up to 20 companies that could win awards for matching USTAR IPP funding. USTAR is unable to estimate the exact cost, since it will vary given the grant amount awarded and the nature of the project conducted. Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** After conducting a thorough analysis, it was determined that this proposed rule is expected to have a cost savings for businesses. It is a grant program where businesses partner with universities to perform research and development of new technologies. USTAR provides matching or shared funds to assist with the research and development.

II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The grant funding for this particular grant is up to \$1,000,000 per year. It is estimated to impact up to 20 companies that could win awards for matching USTAR IPP funding.

III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The small business that could be impacted would be the estimated up to 20 companies that could win awards.

IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The company and university would receive funding from USTAR to offset the company's research and development costs. The total aggregate savings for businesses could be up to \$1,000,000 annually.

V. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual conducting the reporting.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCIENCE TECHNOLOGY AND RESEARCH  
 GOVERNING AUTHORITY (UTAH)  
 ADMINISTRATION  
 SUITE 550  
 111 S MAIN  
 SALT LAKE CITY, UT 84111  
 or at the Office of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ivy Estabrooke by phone at 801-538-8709, by FAX at 801-538-8881, or by Internet E-mail at iestabrooke@utah.gov
- ◆ Justin Berry by phone at 801-538-8884, or by Internet E-mail at jberry@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ivy Estabrooke, Executive Director

### **R856. Science Technology and Research Governing Authority (Utah), Administration.**

#### **R856-2. USTAR University-Industry Partnership Program Grants.**

##### **[R856-2-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

##### **R856-2-2. Purpose and Goals.**

USTAR's Industry Partnership Program promotes the development of industry-university partnerships for technology-based economic development. This program will accelerate the commercialization of technology and innovation by teaming industry and university research expertise to address specific technology problems or gaps identified by a company with a substantial presence in Utah. The technology development will lead to a new product or a market advantage for the company.

##### **R856-2-3. Definitions.**

- (1) "Applicant" means a company and a university researcher applying for a particular collaborative project.
- (2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.
- (3) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.
- (4) "Company" or "Companies" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:
  - (a) does not include an individual, sole proprietorship, or higher education institution; and,
  - (b) is represented by persons at least 18 years old.
- (5) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.
- (6) "IPP" means the USTAR Industry Partnership Program, its activities and services.
- (7) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.
- (8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

(9) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(10) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(11) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(12) "University" means any public or not-for-profit institution of higher education located in Utah.

(13) "USTAR" means the Utah Science, Technology and Research Initiative.

##### **R856-2-4. Eligibility Criteria.**

(1) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

(i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

(A) statewide or regional importance of the industry to Utah's economy;

(B) relative size of the sector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,

(2) Proposal must be jointly developed by a company with a substantial presence in Utah as defined in R856-2-4(4), and a university.

(3) Proposal must be submitted by an authorized body within the university, (Eg. Office of Sponsored Programs);

(4) An authorized representative from the company must certify that:

(a) company lacks technical capacity to resolve stated technology gap;

(b) the proposed university technology will resolve the technology gap; and,

(c) company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

(5) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;

~~(ii) have a valid business license from the governing locality at the company's primary location;~~

~~(iii) meet the following criteria for employees in the state of Utah:~~

~~(A) if the company has 8 full time equivalent employees or less, at least 50% must be employed in Utah;~~

~~(B) if the company has 9-36 full time equivalent employees, at least 4 employees or 25%, whichever is greater, must be employed in Utah;~~

~~(C) if the company has over 36 full time equivalents, at least 10 people must be employed in Utah; or~~

~~(D) as approved by USTAR governing authority.~~

~~(iv) maintain its principal place of business in Utah; and,~~

~~(v) not relocate the company or substantial portions of its employees, operations, or management outside of the State of Utah.~~

~~(b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of the IPP grant by weighing the following factors:~~

~~(i) size of workforce in Utah;~~

~~(ii) percentage of company's total workforce in Utah;~~

~~(iii) amount of matching funds;~~

~~(iv) business taxes paid to the State of Utah;~~

~~(v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;~~

~~(vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;~~

~~(vii) whether the company's principal place of business is in Utah;~~

~~(viii) likelihood that the company will maintain a substantial presence in the state of Utah; and,~~

~~(ix) the degree to which the company's activities and operations positively impact Utah's economy.~~

~~(6) Cost-sharing required:~~

~~(a) Company must pledge a matching contribution to support the project;~~

~~(b) Company matching funds may be provided via:~~

~~(i) Direct payment to university for the research project; and/or~~

~~(ii) "In-kind" contribution, which may include:~~

~~(A) Company Subject Matter Expert(s) (SME) time on the project;~~

~~(B) Materials and equipment;~~

~~(C) Work/research space;~~

~~(D) Travel and other company expenses budgeted for the project; or,~~

~~(E) Other contributions, as approved by USTAR.~~

~~(c) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:~~

~~(i) size of company;~~

~~(ii) budgetary requirements to complete the project; and,~~

~~(iii) potential economic impact to state.~~

~~(b) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.~~

~~(c) All reported cost-share is subject to audit by USTAR.~~

#### **R856-2-5. Application and Submission Guidelines.**

~~(1) USTAR will accept applications for IPP grants on an ongoing basis.~~

~~(2) USTAR will provide the following instructions for applicants:~~

~~(a) The procedure for submitting an application.~~

~~(b) Specific instructions for application content, which will include:~~

~~(i) description of the company's technology and commercialization plan and objectives;~~

~~(ii) list of technical milestones;~~

~~(iii) description of potential market for product;~~

~~(iv) potential economic impact on Utah's economy; and,~~

~~(v) timeline for completion.~~

~~(c) Instructions for providing an outlined budget for total project cost, including:~~

~~(i) total project cost;~~

~~(ii) a description of funds secured or dedicated to the project;~~

~~(iii) an itemized budget detailing planned use of grant funds; and,~~

~~(iv) a breakdown of costs to complete each milestone.~~

~~(d) Description of the application evaluation process and scoring system.~~

~~(e) Instructions for reporting project results and completing annual follow-up surveys.~~

~~(3) The IPP grant application and instructions will be available on USTAR's website and in paper form upon request.~~

~~(4) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.~~

#### **R856-2-6. Application Review Procedure.**

~~(1) Pre-screening.~~

~~(a) Companies are encouraged to work with USTAR headquarters or a USTAR regional director to define the technology gap and identify appropriate researchers at universities.~~

~~(b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.~~

~~(2) Initial eligibility screening.~~

~~(a) USTAR will conduct an initial eligibility screening for each application to ensure:~~

~~(i) completeness;~~

~~(ii) strict conformity with application instructions;~~

~~(iii) verification of minimum eligibility requirements;~~

~~(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.~~

~~(b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected and not considered for review.~~

~~(3) Panel Review.~~

~~(a) Accepted applications will be reviewed independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.~~

~~(i) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.~~

~~\_\_\_\_\_ (ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~

~~\_\_\_\_\_ (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~

~~\_\_\_\_\_ (B) relevant work experience and practical training in the field;~~

~~\_\_\_\_\_ (C) knowledge of the target industry sector in Utah;~~

~~\_\_\_\_\_ (D) experience evaluating grant proposals; and;~~

~~\_\_\_\_\_ (E) any other factors USTAR deems important.~~

~~\_\_\_\_\_ (iii) USTAR will screen the experts for conflicts of interest before reviews are initiated, using the conflict of interest policy on USTAR's website. Experts participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).~~

~~\_\_\_\_\_ (4) Governing authority review.~~

~~\_\_\_\_\_ (a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for IPP grants.~~

~~\_\_\_\_\_ (b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.~~

**R856-2-7. Evaluation and Award Criteria.**

~~\_\_\_\_\_ (1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications (if there is more than 1) and recommend grant amounts:~~

~~\_\_\_\_\_ (a) The scoring criteria will be made available during the application period;~~

~~\_\_\_\_\_ (b) The scoring system will be designed to assess and compare each proposal across several categories, which may include:~~

~~\_\_\_\_\_ (i) technical merit of proposal;~~

~~\_\_\_\_\_ (ii) strength and experience of company and management team;~~

~~\_\_\_\_\_ (iii) appropriate technology readiness level (TRL 2-5);~~

~~\_\_\_\_\_ (iv) potential for economic impact, as measured by potential for:~~

~~\_\_\_\_\_ (A) job creation~~

~~\_\_\_\_\_ (B) product sales;~~

~~\_\_\_\_\_ (C) potential revenue due to expansion of current business or development of new businesses; and/or~~

~~\_\_\_\_\_ (D) projected time to revenue or job creation.~~

~~\_\_\_\_\_ (v) market need;~~

~~\_\_\_\_\_ (vi) technical capabilities and experience of the team;~~

~~\_\_\_\_\_ (vii) commercialization strategy;~~

~~\_\_\_\_\_ (viii) reasonableness of the proposed budget and commitment of matching funds, including whether the amounts are appropriate for the work proposed;~~

~~\_\_\_\_\_ (ix) reasonableness of proposed milestones;~~

~~\_\_\_\_\_ (x) proposed timeline is achievable and will not exceed 18 months; and~~

~~\_\_\_\_\_ (xi) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related~~

to the economic development performance metrics used to evaluate USTAR's activities.

**R856-2-8. Grant Amount, Award, and Required Contract.**

~~\_\_\_\_\_ (1) USTAR will have the discretion to limit the amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.~~

~~\_\_\_\_\_ (2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.~~

~~\_\_\_\_\_ (3) Upon award of an IPP grant, and prior to any disbursement of funds, university and company must enter into contract(s) with USTAR governing the use of grant funding and requirements for participation in the IPP.~~

~~\_\_\_\_\_ (4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:~~

~~\_\_\_\_\_ (a) company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds;~~

~~\_\_\_\_\_ (b) IPP grant funding may not be used to provide a primary benefit to any state or country other than Utah; and;~~

~~\_\_\_\_\_ (c) for all other eligibility requirements, company must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.~~

~~\_\_\_\_\_ (5) Violations of Subsection R856-2-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the IPP program.~~

**R856-2-9. Contract Modifications.**

~~\_\_\_\_\_ (1) University and Company may request a modification to the terms of an IPP contract.~~

~~\_\_\_\_\_ (2) USTAR may deny a modification request for any reason.~~

~~\_\_\_\_\_ (3) USTAR shall have discretion to agree to reasonable, non-substantive changes.~~

~~\_\_\_\_\_ (a) Non-substantive changes may include the following:~~

~~\_\_\_\_\_ (i) changes to timelines of less than one month if it is the first such modification;~~

~~\_\_\_\_\_ (ii) changes to milestone due dates, if the changes do not change the total length of the project;~~

~~\_\_\_\_\_ (iii) corrections to clerical errors in the application materials;~~

~~\_\_\_\_\_ (iv) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~\_\_\_\_\_ (b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.~~

~~\_\_\_\_\_ (4) Substantive changes must be approved by the USTAR governing authority.~~

~~\_\_\_\_\_ (5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.~~

**R856-2-10. Milestones.**

~~(1) IPP grant funding must be used to accelerate the research and development of a technology from TRL level 2 to 5 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.~~

~~(2) Examples of acceptable milestones must be specific to the project may include:~~

- ~~(a) research and development activities;~~
- ~~(b) proof of concept;~~
- ~~(c) product validation; and,~~
- ~~(d) product development.~~

~~(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.~~

~~(4) Specific funding details will be provided in the program announcement and in each IPP grant contract.~~

**R856-2-11. Funding Distribution.**

~~(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.~~

~~(2) Specific funding details will be provided in the program announcement and in each IPP grant contract.~~

~~(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding will be grounds to terminate the contract and any future funding.~~

**R856-2-12. Reporting.**

~~(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.~~

~~(2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.]~~

**R856-2-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-2-2. Purpose and Goals.**

(1) USTAR's Industry Partnership Program (IPP) promotes the development of industry-university partnerships for technology development. This program teams industry and university research expertise to address specific technology problems or gaps identified by a Utah company.

(2) The goals of IPP are to accelerate the commercialization of technology and innovation that will lead to a new product or a market advantage for the company.

**R856-2-3. Definitions.**

(1) "Applicant" means a collaboration between a company and university researcher for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "Company" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and,

(b) is represented by persons at least 18 years old.

(5) "IPP" means the USTAR Industry Partnership Program, its activities and services.

(6) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

(11) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(12) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(13) "USTAR" means the Utah Science, Technology, and Research Initiative.

(14) "Utah Company" means any company that meets the eligibility criteria

**R856-2-4. Eligibility Criteria.**

(1) Proposal must be jointly developed by a Utah company and a university.

(2) Proposal must be submitted by an authorized body within the university.

(3) An authorized representative from the company must certify that:

(a) Company lacks technical capacity to resolve stated technology gap;

(b) The proposed university technology will resolve the technology gap; and,

(c) Company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university, and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

(4) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) Company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and,

(ii) Company must be properly licensed in the appropriate city or county.

(b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of the IPP grant by weighing the following factors:

(i) size of workforce in Utah;

(ii) percentage of company's total workforce in Utah;

(iii) amount of matching funds;

(iv) amount of business taxes paid to the State of Utah;

\_\_\_\_\_ (v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

\_\_\_\_\_ (vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

\_\_\_\_\_ (vii) whether the company's principal place of business is Utah;

\_\_\_\_\_ (viii) likelihood that the company will maintain a significant presence in the state of Utah; and,

\_\_\_\_\_ (ix) the degree to which the company's activities and operations positively impact Utah's economy.

\_\_\_\_\_ (5) Company must achieve cost-sharing requirement:

\_\_\_\_\_ (a) Company must pledge a matching contribution to support the project;

\_\_\_\_\_ (b) Company matching funds may be provided via:

\_\_\_\_\_ (i) Direct payment to university for the research project; and/or

\_\_\_\_\_ (ii) "In-kind" contribution, which may include:

\_\_\_\_\_ (A) Company Subject Matter Expert(s) (SME) time spent on project;

\_\_\_\_\_ (B) Materials and equipment;

\_\_\_\_\_ (C) Work/research space;

\_\_\_\_\_ (D) Travel and other company expenses budgeted for the project; or,

\_\_\_\_\_ (E) Other contributions, as approved by USTAR.

\_\_\_\_\_ (c) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:

\_\_\_\_\_ (i) size of company; and,

\_\_\_\_\_ (ii) potential economic impact to the state.

\_\_\_\_\_ (d) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.

\_\_\_\_\_ (e) All reported cost-share is subject to audit by USTAR.

\_\_\_\_\_ (6) The technology gap must be between TRL 2-5.

\_\_\_\_\_ (7) Applicants must be developing a technology in a targeted industry sector.

\_\_\_\_\_ (a) USTAR will identify the targeted industry sector eligible to receive an IPP grant in the IPP application materials.

\_\_\_\_\_ (b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

\_\_\_\_\_ (c) In selecting industry sectors eligible to receive support from STIG, the Governing Authority may consider the following factors:

\_\_\_\_\_ (i) statewide or regional importance of the industry to Utah's economy;

\_\_\_\_\_ (ii) relative size of the sector, its stability, and growth potential;

\_\_\_\_\_ (iii) characteristics of the state's workforce including education and training;

\_\_\_\_\_ (iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

\_\_\_\_\_ (v) the potential for the industry sector to develop new jobs and business opportunities in the state;

\_\_\_\_\_ (vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

\_\_\_\_\_ (vii) any other factor the governing authority deems relevant, considering the mission of USTAR and the purpose of IPP.

\_\_\_\_\_ (8) If Company or University is a current recipient of a USTAR Grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

#### **R856-2-5. Application Form and Submission Guidelines.**

\_\_\_\_\_ (1) USTAR will accept applications for IPP grants on an ongoing basis.

\_\_\_\_\_ (2) USTAR will make applications and instructions available on USTAR's website and in paper form upon request.

\_\_\_\_\_ (3) The instructions will include the following:

\_\_\_\_\_ (a) A general procedure for submitting an application;

\_\_\_\_\_ (b) Instructions for application content, which includes:

\_\_\_\_\_ (i) description of technology gap;

\_\_\_\_\_ (ii) commercialization plan if technology gap is solved;

\_\_\_\_\_ (iii) description of technical milestones and qualification of team to meet milestones;

\_\_\_\_\_ (iv) potential market;

\_\_\_\_\_ (v) potential economic impact on Utah economy; and,

\_\_\_\_\_ (vi) timeline for completion.

\_\_\_\_\_ (c) Instructions for providing an outlined budget for total project cost, including:

\_\_\_\_\_ (i) a description of any funds already secured for activities related to the project;

\_\_\_\_\_ (ii) an itemized budget detailing planned use of grant funds; and,

\_\_\_\_\_ (iii) breakdown of costs to costs to complete each milestone.

\_\_\_\_\_ (d) Description of the application evaluation process and scoring system.

\_\_\_\_\_ (e) Instructions for reporting project results and completing annual follow-up surveys.

\_\_\_\_\_ (4) All completed applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-2-6 and R856-2-7 herein.

#### **R856-2-6. Application Review Procedure.**

\_\_\_\_\_ (1) Pre-screening.

\_\_\_\_\_ (a) Companies and researchers are encouraged to work with USTAR staff in identifying appropriate researchers and developing a proposal.

\_\_\_\_\_ (b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

\_\_\_\_\_ (2) Initial eligibility screening.

\_\_\_\_\_ (a) USTAR will conduct an initial screening for each application to ensure:

\_\_\_\_\_ (i) completeness; and

\_\_\_\_\_ (ii) verification of minimum eligibility requirements.

\_\_\_\_\_ (b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected.

\_\_\_\_\_ (3) Panel Review.

\_\_\_\_\_ (a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.

(i) Each expert panel will consist of at least two technical experts and one business expert, and use the scoring rubric provided by USTAR.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated.

(4) Governing authority review.

(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(ii) GA subcommittee will consider prior performance of research team in evaluation.

(iii) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.

#### **R856-2-7. Application Evaluation Criteria.**

(1) The review panel will use a scoring system to evaluate grant applications and recommend grant amounts:

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess each proposal and may include:

(i) Technical merit of proposal;

(ii) Appropriate technology readiness level (TRL 2-5);

(iii) Reasonableness of proposed milestones with the recommended technical approach;

(iv) Reasonableness of the proposed timeline;

(v) Potential for economic impact, as measured by potential for:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of new businesses; and/or

(D) projected time to revenue or job creation;

(vi) Commercialization plan/Market need;

(vii) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);

(viii) reasonableness of proposed milestones and timelines; and

(ix) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(2) IPP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(3) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

#### **R856-2-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the maximum amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority. USTAR also reserves the right to certify any agreements between university and company on IP terms and confidentiality, publishing embargos, etc..

(3) Upon award of an IPP grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of IPP grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) Company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds;

(b) IPP grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(c) for all other eligibility requirements, awardees must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-2-8(4) of this section may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the IPP grant.

#### **R856-2-9. Contract Modifications.**

(1) University and Company may request a modification to the terms of an IPP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

#### **R856-2-10. Funding Distribution.**

(1) USTAR shall reimburse University for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-2-11. Reporting.**

(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

(2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

**KEY: Industry Partnership Program (IPP), Utah Science Technology and Research (USTAR), technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [~~August 15, 2017~~] 2018**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

Science Technology and Research  
Governing Authority (Utah),  
Administration  
**R856-3**  
USTAR University Technology  
Acceleration Grants

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 42359  
FILED: 12/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for a USTAR grant program, the USTAR University Technology Acceleration Grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) make USTAR administrative rule language similar across grant programs.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR University Technology Acceleration Grants program and describes the eligibility criteria for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) a description of which entities are eligible to apply for a grant; 3) the specific categories of projects that are eligible for a UTAG; 4) the criteria for awarding grants and determining grant amount; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ LOCAL GOVERNMENTS: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ SMALL BUSINESSES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

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

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY (UTAH)  
ADMINISTRATION  
SUITE 550  
111 S MAIN  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.



## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ivy Estabrooke by phone at 801-538-8709, by FAX at 801-538-8881, or by Internet E-mail at iestabrooke@utah.gov
- ◆ Justin Berry by phone at 801-538-8884, or by Internet E-mail at jberry@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ivy Estabrooke, Executive Director

## **R856. Science Technology and Research Governing Authority (Utah), Administration.**

### **R856-3. USTAR University Technology Acceleration Grants.**

#### **[R856-3-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

#### **R856-3-2. Purpose and Goals.**

(1) University Technology Acceleration Grants (UTAG) provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.

(2) Proposals will be reviewed on a competitive basis. All projects funded through UTAG must have an identified market and/or commercialization path.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation.

#### **R856-3-3. Definitions.**

(1) "Applicant" means an individual researcher or a research team applying for a USTAR UTAG.

(2) "Awardee" means an individual researcher or team that has been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grant funding as described in R856-3-4(2).

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(7) "University" means any public or not-for-profit institution of higher education located in Utah.

(8) "USTAR" means the Utah Science, Technology and Research Initiative.

(9) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

#### **R856-3-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Individual researchers or research teams must be developing a technology in a targeted industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a UTAG in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the governing authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) whether research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(3) If applicable, applicant must have an identified regulatory pathway.

(4) Applicant must have a realistic and verifiable commercialization path for market entry.

(5) Applicant must be developing a technology assessed to be between a TRL of 3-4.

#### **R856-3-5. Application and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for the product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

- ~~\_\_\_\_\_ (ii) a description of funds secured for activities related to the project;~~
- ~~\_\_\_\_\_ (iii) an itemized budget detailing planned use of grant funds; and;~~
- ~~\_\_\_\_\_ (iv) a breakdown of costs to complete each milestone.~~
- ~~\_\_\_\_\_ (d) Description of the application evaluation process and scoring system.~~
- ~~\_\_\_\_\_ (e) Instructions for reporting project results and completing annual follow-up surveys.~~
- ~~\_\_\_\_\_ (3) Completed applications must be received on or before the specified deadline in the application instructions from an authorized agent of the university.~~
- ~~\_\_\_\_\_ (4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.~~

**R856-3-6. Application Review Procedure.**

- ~~\_\_\_\_\_ (1) University Pre-screening.~~
- ~~\_\_\_\_\_ (a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.~~
- ~~\_\_\_\_\_ (2) Initial eligibility screening.~~
- ~~\_\_\_\_\_ (a) USTAR will conduct an initial eligibility screening for each application to ensure:~~
  - ~~\_\_\_\_\_ (i) completeness;~~
  - ~~\_\_\_\_\_ (ii) strict conformity with application instructions;~~
  - ~~\_\_\_\_\_ (iii) verification of minimum eligibility requirements; and~~
  - ~~\_\_\_\_\_ (iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.~~
- ~~\_\_\_\_\_ (b) Any application that fails to meet the criteria in Subsection R856-3-6(2) and R856-3-5(1)-(4) will be rejected and not considered for review.~~
- ~~\_\_\_\_\_ (3) Panel Review.~~
- ~~\_\_\_\_\_ (a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.~~
  - ~~\_\_\_\_\_ (i) Each expert panel will consist of at least two technical subject-matter experts and one business or industry expert.~~
  - ~~\_\_\_\_\_ (ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.~~
  - ~~\_\_\_\_\_ (iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~
    - ~~\_\_\_\_\_ (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~
    - ~~\_\_\_\_\_ (B) relevant work experience and practical training in the field;~~
    - ~~\_\_\_\_\_ (C) knowledge of the target industry sector in Utah;~~
    - ~~\_\_\_\_\_ (D) experience evaluating grant proposals; and;~~
    - ~~\_\_\_\_\_ (E) any other factors USTAR deems important.~~
  - ~~\_\_\_\_\_ (iv) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is~~

~~obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).~~

- ~~\_\_\_\_\_ (4) Governing authority review.~~
- ~~\_\_\_\_\_ (a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for UTAG funding.~~
- ~~\_\_\_\_\_ (b) The subcommittee will recommend projects and amounts of grant funding to the full governing authority for final approval.~~

**R856-3-7. Application Evaluation and Award Criteria.**

- ~~\_\_\_\_\_ (1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts:~~
  - ~~\_\_\_\_\_ (a) The scoring criteria will be made available during the application period;~~
  - ~~\_\_\_\_\_ (b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~
    - ~~\_\_\_\_\_ (i) technical merit of proposal;~~
    - ~~\_\_\_\_\_ (ii) strength and experience of research or management team, as applicable;~~
    - ~~\_\_\_\_\_ (iii) appropriate technology readiness level (TRL 3-4);~~
    - ~~\_\_\_\_\_ (iv) potential economic impact, as measured by:~~
      - ~~\_\_\_\_\_ (A) job creation;~~
      - ~~\_\_\_\_\_ (B) product sales;~~
      - ~~\_\_\_\_\_ (C) potential revenue due to expansion of current business or development of a new business; and, or;~~
      - ~~\_\_\_\_\_ (D) projected time to revenue or job creation;~~
      - ~~\_\_\_\_\_ (v) market need, technical and management experience and qualifications;~~
      - ~~\_\_\_\_\_ (vi) commercialization strategy;~~
      - ~~\_\_\_\_\_ (vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;~~
      - ~~\_\_\_\_\_ (viii) reasonableness of proposed milestones;~~
      - ~~\_\_\_\_\_ (ix) proposed timeline is achievable and will not exceed 18 months; and;~~
      - ~~\_\_\_\_\_ (x) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.~~

**R856-3-8. Grant Amount, Award, and Required Contract.**

- ~~\_\_\_\_\_ (1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG based on available funds, scope of project, and quality of proposal.~~
- ~~\_\_\_\_\_ (2) No overhead, F&A, G&A or any other indirects will be funded by the UTAG program.~~
- ~~\_\_\_\_\_ (3) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgement and discretion of the governing authority.~~
- ~~\_\_\_\_\_ (4) Upon award of a UTAG, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.~~

~~(5) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:~~

~~(a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,~~

~~(b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.~~

~~(6) Violations of Subsection R856-3-8(4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.~~

#### **R856-3-9. Contract Modifications.**

~~(1) University may request a modification to the terms of an UTAG contract.~~

~~(2) USTAR may deny a modification request for any reason.~~

~~(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

~~(i) changes to timelines of less than one month if it is the first such modification;~~

~~(ii) changes to milestone due dates, if the changes do not change the total length of the project;~~

~~(iii) corrections to clerical errors in the application materials;~~

~~(iv) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.~~

~~(4) Substantive changes must be approved by the USTAR governing authority.~~

~~(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.~~

#### **R856-3-10. Milestones.**

~~(1) UTAG funding must be used to accelerate the research and development of a technology from TRL level 3 to 4 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.~~

~~(2) Examples of acceptable milestones must be specific to the project, and may include:~~

~~(a) research and development activities;~~

~~(b) proof of concept;~~

~~(c) product validation; or,~~

~~(d) product development.~~

~~(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.~~

~~(4) Specific funding details will be provided in the program announcement and in each UTAG contract.~~

#### **R856-3-11. Funding Distribution.**

~~(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.~~

~~(2) Specific funding details will be provided in the program announcement and in each UTAG grant contract.~~

~~(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.~~

#### **R856-3-12. Reporting.**

~~(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds; or,~~

~~(2) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.]~~

#### **R856-3-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

#### **R856-3-2. Purpose and Goals.**

(1) USTAR's University Technology Acceleration Grants (UTAG) provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.

(2) The goals of the program are to:

(a) enhance the state's innovation system by supporting the development of technology within Utah universities;

(b) accelerate the creation of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.

#### **R856-3-3. Definitions.**

(1) "Applicant" means an individual researcher or a research team applying for a UTAG.

(2) "Awardee" means an individual researcher or team that have been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "UTAG" and "UTAG grant" mean the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(7) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grants using the selection criteria described in these rules.

(8) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(9) "USTAR" means the Utah Science, Technology, and Research Initiative.

#### **R856-3-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Applicant must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sectors eligible to receive a UTAG grant in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and

(vii) any other factor the governing authority deems relevant, considering the mission of USTAR and the purpose of UTAG.

(3) Applicant must be developing a technology assessed to be between a TRL of 3-4.

(4) If Applicant is a current recipient of a USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

#### **R856-3-5. Application Form and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) A general procedure for submitting an application;

(b) Requirements for a of letter of intent;

(c) Instructions for application content, which includes:

(i) description of the technology;

(ii) commercialization plan;

(iii) description of technical milestones and qualifications of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and

(vi) timeline for completion.

(d) instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and

(iv) breakdown of costs to complete each milestone.

(e) Description of the application evaluation process and scoring system.

(f) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

#### **R856-3-6. Application Review Process.**

(1) Pre-screening

(a) Applicants will submit a letter of intent before the specified deadline.

(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply.

(2) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(3) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-3-6(3) will be rejected.

(4) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.

(i) Each expert panel will consist of at least two technical experts and one business expert.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and

(E) any other factors USTAR deems important.

(v) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA Subcommittee will consider prior performance of applicant in its evaluation.

(b) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

#### **R856-3-7. Application Evaluation Criteria.**

(1) Letter of Intent

(a) The Administrative criteria to review of letters of intent will be published in advance.

(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit of proposal;

(ii) Strength and maturity of research or management team, as applicable;

(iii) Appropriate technology readiness level (TRL 3-4);

(iv) Potential for economic impact, as measured by:

(A) Job creation;

(B) Product sales;

(C) Potential revenue due to expansion of current business or development of a new business; and/or,

(D) Projected time to revenue or job creation;

(v) Commercialization plan/Market need;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);

(vii) reasonableness of proposed milestones and timelines; and

(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) UTAG Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

#### **R856-3-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.

(3) Upon award of a UTAG grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-3-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the UTAG grant.

#### **R856-3-9. Contract Modifications.**

(1) University may request a modification to the terms of an UTAG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

#### **R856-3-10. Funding Distribution.**

(1) USTAR shall reimburse University for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

#### **R856-3-11. Reporting.**

(1) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

**KEY: Utah Science Technology and Research (USTAR), University Technology Acceleration Grants (UTAG), technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [~~August 15, 2017~~] 2018**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

Science Technology And Research  
Governing Authority (Utah),  
Administration  
**R856-4**  
USTAR Science Technology Initiation  
Grant

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 42358

FILED: 12/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016

General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Science Technology Initiation Grants. The new rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**SUMMARY OF THE RULE OR CHANGE:** The Science Technology Initiation Grant (STIG) program provides grants to support university-affiliated researchers to develop preliminary data and to conduct proof of concept experiments, or other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry, or related entity. The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration, and strengthen the research and development capacity at state universities in commercially-oriented areas aligned to existing state industry sectors. STIGs are to be administered to the university that employs the applicant. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **SMALL BUSINESSES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. The Science and Technology Initiation Grant (STIG) program provides grants to support university-affiliated researchers (rather than businesses) in the development of preliminary data to conduct proof of concept experiments, or other precursor research activities required to pursue larger grants from a federal agency, grant making foundation, industry, or related entity.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY (UTAH)  
ADMINISTRATION  
SUITE 550  
111 S MAIN  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Ivy Estabrooke by phone at 801-538-8709, by FAX at 801-538-8881, or by Internet E-mail at [iestabrooke@utah.gov](mailto:iestabrooke@utah.gov)
- ◆ Justin Berry by phone at 801-538-8884, or by Internet E-mail at [jberry@utah.gov](mailto:jberry@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018**

**AUTHORIZED BY:** Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-4. USTAR Science Technology Initiation Grant.**

~~**[R856-4-1. Authority.**~~

~~Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.~~

**R856-4-2. Purpose and Goals.**

(1) The Science and Technology Initiation Grant (STIG) program provides grants to support university affiliated researchers in the development of preliminary data, to conduct proof of concept experiments or other precursor research activities required to pursue larger, grants from a federal agency, grant making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration and strengthen the research and development capacity, particularly in commercially-oriented areas aligned to existing state industry sectors.

(3) STIG grants are to be administered to the university that employs the applicant.

**R856-4-3. Definitions.**

(1) "Applicant" means the university affiliated researcher or research team applying for a STIG for a particular project.

(2) "Awardee(s)" means a project that has been awarded a STIG.

(3) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(4) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.

(5) "Grant making foundation" means any non-profit or not-for-profit organization that awards research grants.

(6) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.

(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.

(8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for STIG grants grant funding as described in these rules.

(9) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(10) "Technology Readiness Level" or "TRL" level means the method of characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(11) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(12) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-4-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.

(4) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in R856-4-7.

(5) USTAR funding cannot be used as a material benefit to another state or country. Funding from a STIG grant must be used within the State of Utah.

(6) Applicants must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sectors eligible to receive a STIG in the STIG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from STIG, the governing authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's existing workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(7) Applicant's existing technology must be assessed to be between TRL 1-3.

(8) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant;

(a) matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) salary of university affiliated researcher or personnel;

(B) cost of Subject Matter Expert(s) (SME);

(C) materials and equipment;

(D) work/research space;

(E) travel and other expenses budgeted for the project; or,

(F) other contributions, as approved by USTAR

**R856-4-5. Application and Submission Guidelines.**

(1) USTAR will accept applications for STIG grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR's website and also in paper form upon request.

(3) The instructions will include the following:

(a) The procedure for submitting an application;

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for the product;

(iv) potential economic impact on Utah's economy and

(v) timeline for completion;

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds secured for activities related to the project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in R856-4-(6)-(7).

#### **R856-4-6. Application Review Procedure.**

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) strict conformity with application instructions;

(iii) verification of minimum eligibility requirements; and

(iv) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-4-6(2) will be rejected and not considered for review.

(3) Panel Review.

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-4-7.

(i) Each expert panel will consist of at least two technical subject-matter experts.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(4) Governing Authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for STIG grants.

(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

#### **R856-4-7. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and experience of the team;

(iii) appropriate technology readiness level (TRL 1-3);

(iv) whether proposal involves a collaboration between researchers at more than one university;

(v) whether the proposal involves a collaboration between researchers in more than one discipline;

(vi) competitiveness of the proposed project and team for the target grant;

(vii) potential economic impact, as measured by:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of a new business; and, or,

(D) projected time to revenue or job creation;

(viii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(ix) reasonableness of proposed milestones and timelines; and

(x) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

#### **R856-4-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG based on available funds, scope of project, and quality of proposal.



~~(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.~~

~~(3) Upon award of a STIG, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.~~

~~(4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:~~

~~(a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,~~

~~(b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.~~

~~(5) Violations of Subsection R856-4-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the program.~~

**R856-4-9. Contract Modifications.**

~~(1) University may request a modification to the terms of an STIG contract.~~

~~(2) USTAR may deny a modification request for any reason.~~

~~(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

~~(i) changes to timelines of less than one month if it is the first such modification;~~

~~(ii) changes to milestone due dates, if the changes do not change the total length of the project;~~

~~(iii) corrections to clerical errors in the application materials;~~

~~(iv) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.~~

~~(4) Substantive changes must be approved by the USTAR governing authority.~~

~~(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.~~

**R856-4-10. Milestones.**

~~(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data-generation projects needed to apply for the targeted funding. Project proposals must identify specific milestones leading to the proposed outcome.~~

~~(2) Examples of acceptable milestones must be specific to the project and designed to result in achieving the targeted funding, may include:~~

~~(a) research and development activities;~~

~~(b) proof of concept;~~

~~(c) product validation; and,~~

~~(d) product development.~~

~~(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.~~

~~(4) Specific funding details will be provided in the program announcement and in each STIG contract.~~

**R856-4-11. Funding Distribution.**

~~(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.~~

~~(2) Specific funding details will be provided in the program announcement and in each STIG grant contract.~~

~~(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.~~

**R856-4-12. Reporting.**

~~(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.]~~

**R856-4-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-4-2. Purpose and Goals.**

(1) USTAR's Science and Technology Initiation Grant (STIG) provides grants to individual researchers or research teams employed by a Utah not-for-profit college or university to develop preliminary data, conduct proof of concept experiments, or perform other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities and strengthen the research and development capacity at state Universities in commercially-oriented areas aligned to existing state industry sectors.

**R856-4-3. Definitions.**

(1) "Applicant" means an individual researcher or research team applying for a STIG.

(2) "Awardee(s)" means an individual researcher or team that have been awarded a STIG.

(3) "Governing authority" means the Utah Science, Technology, and Research Governing Authority.

(4) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.

(8) "Grant making foundation" means any not-for-profit organization that awards research grants (e.g. The Bill and Melinda Gates Foundation, The Lemelson Foundation, etc).

(9) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for STIG grants using the selection criteria described in these rules.

(10) "University" means any public or not-for-profit higher education institution with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology, and Research Initiative.

#### **R856-4-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.

(4) Applicant's existing technology must be assessed to be between TRL 0-3.

(5) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in Section R856-4-7.

(6) USTAR funding cannot be used as a material benefit to another state. Funding from a STIG grant must be used within the State of Utah.

(7) Applicants must be developing a technology in a targeted industry sector.

(a) USTAR will identify the targeted industry sector eligible to receive a STIG grant in the STIG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from STIG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(8) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant:

(a) matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) Salary of university-affiliated researcher or personnel;

(B) Cost of Subject Matter Expert(s) (SME) time spent on project;

(C) Materials and equipment;

(D) Work/research space;

(E) Travel and other expenses budgeted for the project; or

(F) Other contributions, as approved by USTAR

(4) If Applicant is a current recipient of a USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

#### **R856-4-5. Application Form and Submission Guidelines.**

(1) USTAR will accept applications for STIG grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR's website and in paper form upon request.

(3) The instructions will include the following:

(a) A general procedure for submitting an application.

(b) Instructions for application content, which includes:

(A) description of the target grant;

(B) description of technical milestones and qualifications of team to meet milestones;

(C) timeline for completion of research.

(iii) Instructions for providing an outlined budget for total project cost including:

(2) a description of any funds already secured for activities related to the project;

(3) an itemized budget detailing planned use of grant funds; and,

(4) funding by milestones and timelines.

(iv) Description of the application evaluation process and scoring system.

(v) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-4-6 and R856-4-7 herein.

#### **R856-4-6. Application Review Procedure.**

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-4-6(2) will be rejected.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-4-7.

(i) Each expert panel will consist of at least two technical experts who will use the scoring rubric provided by USTAR.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target grant program/agency.

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing Authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA Subcommittee will consider prior performance of applicant on in evaluation.

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

#### **R856-4-7. Application Evaluation Criteria.**

(1) The panel of subject matter experts will use a scoring rubric to evaluate applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess each proposal and may include:

(i) technical merit of proposal;

(iii) whether proposal involves a collaboration between researchers at more than one university;

(iv) whether the proposal involves a collaboration between researchers in more than one discipline;

(v) competitiveness of the proposed project and team for the target grant;

(vi) potential economic benefit to the state;

(vii) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed additional funds available to complete work);

(viii) reasonableness of proposed milestones and timelines; and

(ix) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance, including capture of Federal Funding.

#### **R856-4-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG grant based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject

any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.

(3) Upon award of a STIG grant, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.

(4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.

(5) Violations of Sections R856-4-8(-4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the STIG grant.

#### **R856-4-9. Contract Modifications.**

(1) University may request a modification to the terms of STIG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of within the scope of work

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, researcher eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

#### **R856-4-10. Milestones.**

(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding.

(2) Acceptable milestones must be specific to the project and designed to result in achieving the targeted funding.

(3) Specific funding details will be provided in the program announcement and in each STIG contract.

#### **R856-4-11. Funding Distribution.**

(1) USTAR shall reimburse University for no more than the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

#### **R856-4-12. Milestones and Reporting.**

(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.

**KEY:** Science Technology Initiation Grant (STIG), Utah Science Technology and Research (USTAR), technology readiness level (TRL)

**Date of Enactment or Last Substantive Amendment:** [~~August 15, 2017~~] **2018**

**Authorizing, and Implemented or Interpreted Law:** 63M-2-302(h)

**Science Technology And Research  
Governing Authority (Utah),  
Administration**

**R856-5**

**Utah Science, Technology, and  
Research (USTAR) Energy Research  
Triangle Professors (ERT-P) Grant**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 42356

FILED: 12/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Professors Grant. This rule establishes the eligibility and reporting criteria for an entity to receive a grant under Section 63M-2-503 including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a USTAR Energy Research Triangle Professors Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR Energy Research Triangle Professors grant program, which is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (OED) and will be administered according to this rule. Grants provide funding for projects in which research teams from at least three Utah non-profit higher education institutions collaborate to address energy-related technical challenges important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months.

Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **SMALL BUSINESSES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. Energy Research Triangle Professors Grants provide funding to university faculty research professors for student-led projects.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY (UTAH)

ADMINISTRATION

SUITE 550

111 S MAIN

SALT LAKE CITY, UT 84111

or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Ivy Estabrooke by phone at 801-538-8709, by FAX at 801-538-8881, or by Internet E-mail at [iestabrooke@utah.gov](mailto:iestabrooke@utah.gov)

◆ Justin Berry by phone at 801-538-8884, or by Internet E-mail at [jberr@utah.gov](mailto:jberr@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-5. Utah Science, Technology, and Research (USTAR) Energy Research Triangle Professors (ERT-P) Grant.**

**[R856-5-1. Authority.**

Subsection 63M-2-503(2) requires the Utah Science, Technology and Research (USTAR) governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-5-2. Purpose and Goals.**

(1) The USTAR Energy Research Triangle (ERT) Professors (ERT-P) grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development (OED) and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects in which research teams from at least 3 universities seek to address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

**R856-5-3. Definitions.**

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Energy Research Triangle - Professor grant.

(3) "Commercialization plan" means the strategy or process by which a researcher or research team will introduce a technology into the market.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(5) "ERT-S" and "ERT-Scholars" means the Energy Research Triangle - Scholars grant program, a competitive grant program administered by USTAR.

(6) "Governing authority" and "GA" means the Utah Science, Technology and Research Governing Authority.

(7) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(8) "OED" means the Utah Governor's Office of Energy Development.

(9) "Research faculty" means a full-time employee of a Utah university.

(10) "Research team" means at least three research faculty representing at least three universities.

(11) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material applications, virtual or digital applications, or intellectual property.

(12) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(13) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(14) "USTAR" means the Utah Science, Technology and Research Initiative.

(15) "UTAG" means the University Technology Acceleration Grants administered by USTAR.

**R856-5-4. Eligibility Criteria.**

(1) The ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education (<http://carnegieclassifications.iu.edu/classification-descriptions/basic.php>). The following three Utah universities are currently classified as research universities (as of 5/1/2017):

(i) Brigham Young University;

(ii) University of Utah;

(iii) Utah State University;

(2) Research team must be developing a technology with applications that can address technical challenges related to energy and/or natural resource challenges important to economic development in the state of Utah.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(i) statewide or regional importance of the subsector to Utah's economy;

(ii) relative size of the subsector, its stability, and growth potential;

(iii) characteristics of the state's existing workforce, including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the subsector to develop new jobs and business opportunities in the state; and,

(vi) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

~~(3) Eligible technologies will be between a TRL of 2-5 at the time of the application.~~

~~(4) Applicants may not receive ERT-P, ERT-S and/or UTAG funding for the same technology in the same Utah fiscal year.~~

~~(5) ERT-P funds cannot support development of a technology beyond a TRL of 6.~~

**R856-5-5. Application and Submission Guidelines.**

~~(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.~~

~~(2) Completed applications must be received on or before the specified deadline in the application instructions.~~

~~(3) The instructions will include the following:~~

~~(a) The procedure for submitting an application.~~

~~(b) Specific instructions for application content which will include:~~

~~(i) technical overview of the project:~~

~~(A) description of the technology and commercialization plan and objectives;~~

~~(B) list of technical milestones;~~

~~(C) Description of potential market for product;~~

~~(D) Potential economic impact on Utah's economy; and~~

~~(E) timeline for completion.~~

~~(ii) Specific instructions for the required budget outline, including:~~

~~(A) total project cost;~~

~~(B) a description of funds secured for activities related to this project;~~

~~(C) an itemized budget detailing planned use of grant funds; and,~~

~~(D) breakdown of costs to complete each milestone.~~

~~(iii) Description of the application evaluation process and scoring system.~~

~~(iv) Instructions for reporting project results and completing annual follow-up surveys.~~

~~(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in R856-5-6 and R856-5-7.~~

**R856-5-6. Application Review Procedure.**

~~(1) Initial eligibility screening-~~

~~(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:~~

~~(i) completeness;~~

~~(ii) strict conformity with application instructions~~

~~(iii) verification of minimum eligibility requirements; and~~

~~(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.~~

~~(b) Any application that fails to meet the criteria in R856-5-6(1) will be rejected and not considered for review.~~

~~(2) Panel Review.~~

~~(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-5-7.~~

~~(i) Each expert panel will consist of at least two technical subject-matter experts and one business or industry expert.~~

~~(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.~~

~~(iii) USTAR/OED will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~

~~(A) academic qualifications including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~

~~(B) relevant work experience and practical training in the field;~~

~~(C) knowledge of the commercial/industrial energy or natural resources sector or sub-sector in Utah;~~

~~(D) experience evaluating grant proposals;~~

~~(E) general investment experience; and,~~

~~(F) any other factors USTAR/OED deems important.~~

~~(iv) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).~~

~~(3) Governing authority review.~~

~~(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.~~

~~(b) The subcommittee will recommend projects for award and award amounts of a grant funding to the full governing authority for final approval.~~

~~(c) The Governor or his designee must approve the projects.~~

**R856-5-7. Evaluation and Award Criteria.**

~~(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts.~~

~~(a) The scoring criteria will be made available during the application period;~~

~~(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~

~~(i) technical merit of proposal;~~

~~(ii) strength and experience of research and management team;~~

~~(iii) appropriate technology readiness level~~

~~(iv) potential economic impact, as measured by:~~

~~(A) job creation;~~

~~(B) potential for the development of original intellectual property;~~

~~(C) potential for technology transfer to industry or establishment of a start-up company.~~

~~(D) projected time to revenue or job creation;~~

~~\_\_\_\_\_ (E) other measures of economic impact such as natural resource, environmental or Utah-specific impacts;~~

~~\_\_\_\_\_ (v) market need;~~

~~\_\_\_\_\_ (vi) technical and management experience and qualifications;~~

~~\_\_\_\_\_ (vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;~~

~~\_\_\_\_\_ (viii) reasonableness of proposed milestones;~~

~~\_\_\_\_\_ (ix) proposed timeline is achievable and will not exceed 12 months; and,~~

~~\_\_\_\_\_ (x) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.~~

**~~R856-5-8. Grant Amount, Award, and Required Contract.~~**

~~\_\_\_\_\_ (1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P based on available funds, scope of project, and quality of proposal.~~

~~\_\_\_\_\_ (2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.~~

~~\_\_\_\_\_ (3) Upon award of an ERT-P, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.~~

~~\_\_\_\_\_ (a) The "lead university" is defined as the principal investigator's university~~

~~\_\_\_\_\_ (b) Subcontracts to the remaining universities will be administered by the lead university.~~

~~\_\_\_\_\_ (4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:~~

~~\_\_\_\_\_ (a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,~~

~~\_\_\_\_\_ (b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.~~

~~\_\_\_\_\_ (5) Violations of R856-5-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the program.~~

~~\_\_\_\_\_ (6) University overhead, F and A or G and A are not allowed on ERT-P awards.~~

**~~R856-5-9. Contract Modifications.~~**

~~\_\_\_\_\_ (1) University may request a modification to the terms of an ERT-P contract.~~

~~\_\_\_\_\_ (2) USTAR may deny a modification request for any reason.~~

~~\_\_\_\_\_ (3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~\_\_\_\_\_ (a) Nonsubstantive changes may include the following:~~

~~\_\_\_\_\_ (i) changes to milestone due dates, if the changes do not change the total length of the project;~~

~~\_\_\_\_\_ (ii) corrections to clerical errors in the application materials;~~

~~\_\_\_\_\_ (iii) technical changes to conditions that do not alter the budget, applicant's eligibility status, or violate any state or federal law;~~

~~\_\_\_\_\_ (b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.~~

~~\_\_\_\_\_ (4) Substantive changes must be approved by the USTAR governing authority.~~

~~\_\_\_\_\_ (5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.~~

**~~R856-5-10. Milestones.~~**

~~\_\_\_\_\_ (1) Award funding must be used to accelerate the research and development of a technology from one TRL level to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.~~

~~\_\_\_\_\_ (2) Examples of acceptable milestones must be specific to the student researcher to engage in project may include:~~

~~\_\_\_\_\_ (a) research under and development activities;~~

~~\_\_\_\_\_ (b) proof of concept;~~

~~\_\_\_\_\_ (c) product validation; and,~~

~~\_\_\_\_\_ (d) product development.~~

~~\_\_\_\_\_ (3) Remaining grant funds will be disbursed upon successful completion of designated milestones.~~

~~\_\_\_\_\_ (4) Specific funding details will be provided in the program announcement and in each grant contract.~~

**~~R856-5-11. Funding Distribution.~~**

~~\_\_\_\_\_ (1) Award funding shall be made to the lead university and will be distributed per the subcontracts to each of the supporting universities.~~

~~\_\_\_\_\_ (2) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.~~

~~\_\_\_\_\_ (3) Specific funding details will be provided in the program announcement and in each ERT-P grant contract.~~

~~\_\_\_\_\_ (4) Failure to successfully complete the milestones will be grounds to terminate the contract and any future funding.~~

**~~R856-5-12. Milestones and Reporting.~~**

~~\_\_\_\_\_ (1) Research team is required to provide reporting, as applicable, specified in Sections 63M-2-702 and 704 for at least (5) years following initial receipt of the grant funds.]~~

**~~R856-5-1. Authority.~~**

~~\_\_\_\_\_ Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.~~

**~~R856-5-2. Purpose and Goals.~~**

~~\_\_\_\_\_ (1) USTAR's Energy Research Triangle Professors grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.~~

~~\_\_\_\_\_ (2) Grants provide funding for projects in which research teams from at least 3 Utah non-profit higher education institutions collaborate to address energy related technical challenges important to economic growth in the state of Utah.~~

**R856-5-3. Definitions.**

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a research team that has been awarded an Energy Research Triangle - Professor grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(5) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(10) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology, and Research Initiative.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology, and Research Initiative.

**R856-5-4. Eligibility Criteria.**

(1) ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities or colleges.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education

([http://carnegieclassifications.iu.edu/classification\\_descriptions/basic.php](http://carnegieclassifications.iu.edu/classification_descriptions/basic.php)). The following three Utah universities are currently classified as research universities:

(i) University of Utah;

(ii) Utah State University;

(iii) Brigham Young University;

(d) Research team may include at least one researcher from universities in the state of Utah other than those listed in (1)(c).

(2) Research team must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state;

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company; and,

(G) any other factor USTAR/OED deems relevant, considering the mission of USTAR and the purpose of ERT-P.

(3) Eligible technologies will be between a TRL 2-5;

(4) Applicants may not receive ERT-P funding and UTAG funding for the same technology in the same Utah fiscal year.

(5) If Applicant is a current recipient of any other USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

**R856-5-5. Application Form and Submission Guidelines.**

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) A general procedure for submitting an application;

(b) Requirements for a letter of intent;

(c) Instructions for application content which includes:

(i) description of the technology;

(ii) commercialization plan;

(iii) description of technical milestones and qualifications of team to meet milestones;

(iv) potential market;

(v) potential economic impact on Utah economy; and,

(vi) timeline for completion.

(d) Instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds;

and,

(iv) breakdown of costs to complete each milestone.

(e) Description of the application evaluation process and scoring system.

(f) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-5-6 and R856-5-7 herein.

**R856-5-6. Application Review Procedure.**

(1) Pre-screening

(a) Applicants will submit a letter of intent before the specified deadline.



(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply.

(2) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(3) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:

(i) Completeness; and,

(ii) Verification of minimum eligibility requirements.

(b) Any application that fails to meet the criteria in Section R856-5-(3) will be rejected.

(4) Panel Review.

(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-5-7.

(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the commercial/industrial energy sector or sub-sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR/OED deems important.

(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(5) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA subcommittee will consider prior performance of applicant in its evaluation.

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

#### **R856-5-7. Application Evaluation Criteria.**

(1) Letter of Intent

(a) The Administrative criteria to review of letters of intent will be published in advance.

(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit of proposal;

(ii) Strength and maturity of research and management team, as applicable;

(iii) Appropriate technology readiness level (TRL 2-5);

(iv) Potential economic impact, as measured by:

(A) Job creation;

(B) Product sales;

(C) Potential revenue due to expansion of current business or development of a new business; and/or

(D) Projected time to revenue or job creation;

(E) Other measures of economic impact such as natural resource impacts.

(v) Market need, technical and management experience and qualifications;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);

(vii) Reasonableness of proposed milestones and timelines; and,

(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

(3) ERT-P Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.

(4) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

#### **R856-5-8. Grant Amount, Award, and Required Contract.**

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P grant based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of an ERT-P grant, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.

(a) The "lead university" is defined as the principal investigator's university

(b) Subcontracts to the remaining universities will be administered by the lead university.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-5-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the ERT-P grant.

#### **R856-5-9. Contract Modifications.**

University may request a modification to the terms of an ERT-P contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

- (a) Nonsubstantive changes may include the following:
- (i) changes to timelines within the scope of work;
- (ii) corrections to clerical errors in the application materials;
- (iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;
- (3) Substantive changes must be approved by the USTAR governing authority.
- (4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

**R856-5-10. Funding Distribution.**

- (1) Funding will be provided to the lead university and will be distributed per the subcontracts to each of the supporting universities.
- (2) USTAR shall reimburse University for no more than the total amount specified in the contract.
- (3) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.
- (4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-5-11. Reporting.**

- (1) University is required to provide reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 704.
- (2) USTAR Executive Director can modify or waive reporting requirement if the USTAR grant is less than \$50k.

**KEY:** ~~[ERF]~~**Energy Research Triangle Professors Grant (ERT-P), Utah Science Technology and Research (USTAR), technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment:** ~~[August 15, 2017]~~ **2018**

**Authorizing, and Implemented or Interpreted Law:** 63M-2-302(h)

Science Technology and Research  
Governing Authority (Utah),  
Administration

**R856-6**

Utah Science, Technology and  
Research (USTAR) Energy Research  
Triangle Scholars (ERT-S) Grant

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 42355  
FILED: 12/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016

General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Scholars Grant. This rule establishes the eligibility and reporting criteria for an entity to receive a grant under Section 63M-2-503 including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a USTAR Energy Research Triangle Scholars Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR Energy Research Triangle Scholars grant program, which is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (GOED) and will be administered according to these rules. Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation. The repeal and reenact is to: 1) clarify and codify the language in the administrative rule for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; 3) make USTAR administrative rule language similar across grant programs; and 4) general cleanup.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **SMALL BUSINESSES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five subsequent years at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual submitting the report.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. Only universities can apply for these grants. Therefore, businesses are not affected by this rule. It is anticipated that businesses will likely benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule because the impact is indirect and will vary depending on circumstances.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY (UTAH) ADMINISTRATION  
 SUITE 550  
 111 S MAIN  
 SALT LAKE CITY, UT 84111  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Ivy Estabrooke by phone at 801-538-8709, by FAX at 801-538-8881, or by Internet E-mail at iestabrooke@utah.gov  
 ♦ Justin Berry by phone at 801-538-8884, or by Internet E-mail at jberry@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018

THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-6. Utah Science, Technology and Research (USTAR) Energy Research Triangle Scholars (ERT-S) Grant.**

**[R856-6-1. Authority.**

Subsection 63M-2-503(2) requires the Utah Science, Technology and Research (USTAR) governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-6-2. Purpose and Goals.**

(1) The USTAR Energy Research Triangle (ERT) Scholars (ERT-S) grant program is a collaborative effort between

USTAR and the Utah Governor's Office of Energy Development (OED) and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

**R856-6-3. Definitions.**

(1) "Applicant" means the university faculty research professor and student for a particular project.

(2) "Awardee" means a project that has been awarded an Energy Research Triangle - Scholars grant.

(3) "Commercialization plan" means the strategy or process by which a researcher will introduce a technology into the market.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle - Scholar grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" and "GA" means the Utah Science, Technology and Research Governing Authority.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual or digital application, or intellectual property.

(8) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(9) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by USTAR.

**R856-6-4. Eligibility Criteria.**

(1) The ERT-S grant is restricted to university researchers for student led projects meeting the following guidelines:

(a) Project must be led by currently matriculated student in good standing.

(b) Project must be led by student enrolled in a university.

(c) Student project must be overseen by a research professor at a university.

(2) Student researcher must be developing a technology with applications that can address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

~~(b) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:~~

~~(i) statewide or regional importance of the subsector to Utah's economy;~~

~~(ii) relative size of the subsector, its stability, and growth potential;~~

~~(iii) characteristics of the state's existing workforce, including education and training;~~

~~(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;~~

~~(v) the potential for the subsector to develop new jobs and business opportunities in the state; and;~~

~~(vi) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.~~

~~(3) Eligible technologies will be between a TRL of 2 and 5 at the time of application.~~

~~(4) Applicants may not receive ERT-S, ERT-P and/or UTAG funding for the same technology in the same Utah fiscal year.~~

~~(5) ERT-S funds cannot support development of a technology beyond a TRL of 6.~~

#### **R856-6-5. Application and Submission Guidelines.**

~~(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website and in paper form upon request.~~

~~(2) The instructions will include the following:~~

~~(a) The procedure for submitting an application.~~

~~(b) Specific instructions for application content, which will include:~~

~~(i) description of the company's technology and commercialization plan and objectives;~~

~~(ii) list of technical milestones;~~

~~(iii) description of potential market for product;~~

~~(iv) potential economic impact on Utah's economy; and;~~

~~(v) timeline for completion.~~

~~(c) Specific instructions for the required budget outline, including:~~

~~(i) total project cost;~~

~~(ii) a description of funds secured for activities related to the project;~~

~~(iii) an itemized budget detailing planned use of grant funds; and;~~

~~(iv) a breakdown of costs to complete each milestone.~~

~~(d) Description of the application evaluation process and scoring system.~~

~~(e) Instructions for reporting project results and completing annual follow-up surveys.~~

~~(3) Completed applications must be received on or before the specified deadline in the application instructions.~~

~~(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-6-6 and R856-6-7 herein.~~

#### **R856-6-6. Application Review Procedure.**

~~(1) Initial eligibility screening:~~

~~(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:~~

~~(i) completeness;~~

~~(ii) strict conformity with application instructions;~~

~~(iii) verification of minimum eligibility requirements; and~~

~~(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.~~

~~(b) Any application that fails to meet the criteria in R856-6-6(1) will be rejected and not considered for review.~~

~~(2) Panel Review:~~

~~(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-6-7.~~

~~(i) Each expert panel will consist of at least two technical subject-matter experts and one business or industry expert.~~

~~(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.~~

~~(iii) USTAR/OED will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~

~~(A) academic qualifications including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~

~~(B) relevant work experience and practical training in the field;~~

~~(C) knowledge of the commercial/industrial energy or natural resources sector or sub-sector in Utah;~~

~~(D) experience evaluating grant proposals;~~

~~(E) general investment experience; and;~~

~~(F) any other factors USTAR/OED deems important.~~

~~(iv) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).~~

~~(3) Selection Committee:~~

~~(a) USTAR and OED may hold a selection committee to discuss the outcomes of the panel review.~~

~~(4) Governing authority review:~~

~~(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for grants.~~

~~(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.~~

~~(c) The Governor or his designee must approve the projects.~~

**R856-6-7. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts:

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and experience of company and management team;

(iii) appropriate technology readiness level

(iv) abilities and potential of the student to complete the research and/or pursue a career related to energy or natural resources;

(v) potential economic impact, as measured by:

(A) potential for the development of original intellectual property;

(B) potential for technology transfer to industry or establishment of a start-up company;

(C) projected time to revenue or job creation;

(D) other measures of economic impact such as natural resource, environmental or Utah-specific impacts;

(E) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities

(vi) market need;

(vii) technical and management experience and qualifications of faculty advisor;

(viii) commercialization strategy

(ix) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(x) reasonableness of proposed milestones;

(xi) proposed timeline is achievable and will not exceed 18 months; and

(xii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-6-8. Grant Amount, Award, and Required Contract.**

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of a ERT-S, and prior to any disbursement of funds, each university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and;

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of R856-6-8(4) may result in forfeiture of ERT-S grant funding and may require repayment of all or a portion of the funding received as part of the program.

(6) University overhead, F&A or G&A are not allowed on ERT-S awards.

**R856-6-9. Contract Modifications.**

University may request a modification to the terms of an ERT-S contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to milestone due dates, if the changes do not change the total length of the project;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, applicant's eligibility status, or violate any state or federal law;

(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-6-10. Milestones**

(1) Award funding must be used to accelerate the research and development of a technology from one TRL level to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the student researcher to engage in project may include:

(a) research under and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each grant contract.

**R856-6-11. Funding Distribution.**

(5) Award funding must be made to the university faculty research professor mentoring the student. The professor will then

distribute funds to the student researcher to engage in research under the professor's direction.

(6) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(7) Specific funding details will be provided in the program announcement and in each ERT-S grant contract.

(8) Failure to successfully complete the milestones may result in recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

#### **R856-6-12. Reporting.**

(1) Student researcher is required to provide reporting, as applicable, specified in Section 63M-2-702 and 704 for at least (5) years following initial receipt of the grant funds.]

#### **R856-6-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

#### **R856-6-2. Purpose and Goals.**

(1) USTAR's Energy Research Triangle Scholars grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah.

#### **R856-6-3. Definitions.**

(1) "Applicant" means the researcher for a particular project.

(2) "Awardee" means a researcher that has been awarded an Energy Research Triangle Scholars grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle Scholar grant program, a competitive grant program administered by USTAR.

(5) "OED" means the Utah Governor's Office of Energy Development.

(6) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(7) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the Federal Government and is available on the USTAR website.

(9) "University" means any public or not-for-profit institution of higher education with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

#### **R856-6-4. Eligibility Criteria.**

(1) The ERT-S grant is restricted to university-affiliated researchers for student-lead projects meeting the following guidelines:

(a) Project must be led by currently matriculated students in good standing.

(b) Project must be led by student enrolled in a nonprofit Utah university.

(c) Student project must be overseen by a research professor at a nonprofit Utah university.

(2) Student researcher must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

(b) ERT-S grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state; and

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(G) any other factor USTAR/OED deems relevant, considering the mission of USTAR and the purpose of ERT-S.

(3) Student researcher must be developing a technology assessed at the start of the project to be between a TRL of 2 and 5.

(4) ERT-S, ERT-P funding and UTAG funding cannot be requested for the same technology in the same fiscal year.

(4) If Applicant is a current recipient of any other USTAR grant, that project must be verified as complete by USTAR before the application deadline in order for the awardee to be eligible to apply, unless expressly exempted by USTAR.

#### **R856-6-5. Application Form and Submission Guidelines.**

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) A general procedure for submitting an application.

(b) Requirements for a letter of intent;

(c) Instructions for application content which includes:

(i) description of the technology;

(ii) commercialization plan;  
(iii) description of technical milestones and qualifications of team to meet milestones;  
(iv) potential market;  
(v) potential economic impact on Utah economy; and,  
(vi) timeline for completion.  
(d) Instructions for the required budget outline, including:  
(i) total project cost;  
(ii) a description of funds already secured for activities related to this project;  
(iii) an itemized budget detailing planned use of grant funds; and,  
(iv) breakdown of costs to complete each milestone.  
(e) Description of the application evaluation process and scoring system.  
(f) Instructions for reporting project results and completing annual follow-up surveys.  
(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-6-6 and R856-4-7 herein.

#### **R856-6-6. Application Review Procedure.**

(1) Pre-screening  
(a) Applicants will submit a letter of intent before the specified deadline.  
(b) Letter of intent will be reviewed by USTAR staff to determine eligibility to apply.  
(2) University Pre-screening.  
(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.  
(3) Initial eligibility screening.  
(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:  
(i) Completeness; and,  
(ii) Verification of minimum eligibility requirements.  
(b) Any application that fails to meet the criteria in Section R856-6-6(3) will be rejected.  
(4) Panel Review.  
(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-6-7.  
(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:  
(A) academic qualifications including whether the expert has a terminal degree in a relevant field;  
(B) relevant work experience and practical training in the field;  
(C) knowledge of the commercial/industrial energy sector or sub-sector in Utah;  
(D) experience evaluating grant proposals; and,  
(E) any other factors USTAR/OED deems important.  
(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.  
(5) Governing authority review.  
(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The GA subcommittee will consider prior performance of applicant in its evaluation.

(c) The subcommittee will recommend projects for award and award amounts to the full governing authority for final approval.

#### **R856-6-7. Evaluation and Award Criteria.**

(1) Letter of Intent  
(a) The Administrative criteria to review of letters of intent will be published in advance.  
(2) The review panel will use a scoring system to evaluate and rank grant applications and recommend grant amounts.  
(a) The scoring criteria will be made available during the application period:  
(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:  
(i) Technical merit of proposal;  
(ii) Strength and maturity of research or management team, as applicable;  
(iii) Appropriate technology readiness level (TRL 2- 5);  
(iv) Potential economic impact, as measured by:  
(A) Job creation;  
(B) Product sales;  
(C) Potential revenue due to expansion of current business or development of a new business; and/or,  
(D) Projected time to revenue or job creation;  
(E) Other measures of economic impact such as natural resource impacts.  
(v) Market need, technical and management experience and qualifications;  
(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);  
(vii) Reasonableness of proposed milestones and timelines; and,  
(ix) Potential for positive impact on student's professional development goals and.  
(x) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.  
(3) ERT-S Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.  
(4) Examples of acceptable milestones must be specific to the project may include:  
(a) research and development activities;  
(b) proof of concept;  
(c) product validation; and,  
(d) product development.

#### **R856-6-8. Grant Amount, Award, and Required Contract.**

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S grant based on available funds, scope of project, and quality of proposal.  
(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of a ERT-S grant, and prior to any disbursement of funds, each university must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Section R856-6-8(4) may result in forfeiture of ERT-S grant funding and may require repayment of all or a portion of the funding received as part of the ERT-S grant.

#### **R856-6-9. Contract Modifications.**

University may request a modification to the terms of an ERT-S contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

#### **R856-6-10. Funding Distribution.**

(1) Award funding shall be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor's direction.

(2) USTAR shall reimburse University for no more than the total amount specified in the contract.

(3) Payment will only be made for those costs authorized and approved by USTAR and submitted in accordance with the terms and conditions provided in the contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

#### **R856-6-11. Milestones and Reporting.**

(1) University is required to provide reporting for researchers, as applicable, specified in Section 63M-2-702 and 704.

(2) USTAR Executive Director can modify or waive reporting if grant is less than 50k.

**KEY: Energy Research Triangle Scholars Grant (ERT-S), Utah Science Technology and Research (USTAR), technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [August 15, 2017]2018**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

## Transportation, Motor Carrier **R909-19** Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42336

FILED: 11/17/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment to Rule R909-19 is to ensure that changes to H.B. 393, from the 2017 General Session, are also reflected in rule so that the rule is consistent with the amended statute.

**SUMMARY OF THE RULE OR CHANGE:** The Motor Carrier Division will ensure that all tow truck motor carrier operators are trained, licensed, have cleared a criminal background check, and obtained and maintained a valid medical examiner's certificate. A tow truck motor carrier must notify the Department of Transportation (Department) of an operator who is not in compliance, within two business days of obtaining knowledge from the Bureau of Criminal Identification. This amendment includes electronically accessible consumer protection information, and a list of all tow truck motor carriers that are currently certified by the Department. The web sites for the safety equipment list, and the Rocky Mountain daily average per gallon diesel cost have been corrected.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-1405 and Section 53-1-106 and Section 72-9-601 and Section 72-9-603 and Section 72-9-604

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate that this amendment will lead to costs or savings to the state budget because this amendment only affects the Department and the tow truck motor carriers it regulates.

♦ **LOCAL GOVERNMENTS:** The Department does not anticipate that this amendment will lead to costs or savings to local governments because this amendment only affects the Department and the tow truck motor carriers it regulates.

♦ **SMALL BUSINESSES:** The Department does not anticipate that this amendment will lead to costs or savings to small businesses because this amendment only affects the Department and the tow truck motor carriers it regulates.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate that this amendment will lead to costs or savings to persons other than small



businesses, businesses, or local government entities because this amendment only affects the Department and the tow truck motor carriers it regulates.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not anticipate that this amendment to Rule R909-19 will result in any compliance costs for affected persons. These changes are technical edits and clarifications to make the rule more readable, and to better explain how the Department applies the Safety Regulations for Tow Truck Operations. This amendment does not add requirements to the compliance criteria of the Safety Regulations.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment will not have a fiscal impact on businesses.

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

TRANSPORTATION  
MOTOR CARRIER  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)  
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)  
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/16/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/23/2018**

**AUTHORIZED BY: Carlos Braceras, Executive Director**

### **R909. Transportation, Motor Carrier.**

#### **R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.**

##### **R909-19-1. Authority.**

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

##### **R909-19-2. Applicability.**

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

### **R909-19-3. Definitions.**

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency Moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-Essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

(8) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-Consent Non-[–]Police Generated Tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal Office Hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-[driver]operator towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(12) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(13) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(14) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repossession towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(15) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed Vehicle Classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light Duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium Duty" means any towed vehicle with a GVWR between 10,001 and 26,000 pounds;

(iii) "Heavy Duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(16) "Tow truck operator" means a natural person who drives or operates the towing equipment or a motor vehicle adapted to or designed for the towing of motor vehicles.

\_\_\_\_(1[6]Z) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

#### **R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.**

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

#### **R909-19-5. Insurance.**

(1) Tow Truck Motor Carriers performing emergency moves shall maintain liability insurance coverage of at least \$750,000 per occurrence. Tow Truck Motor Carriers performing non-emergency moves shall maintain liability insurance coverage of at least \$1,000,000 per occurrence.

(2) All Tow Truck Motor Carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance shall be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to issuance of the Tow Truck Motor Carrier certification.

#### **R909-19-6. Penalties and Fines.**

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

#### **R909-19-7. Towing Notice Requirements.**

(1) All non-consent police generated and non-consent non-police generated tows conducted by Tow Truck Motor Carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "<https://secure.utah.gov/ivs/ivs>" as required by 41-6a-1406(11).

(2) Tow Truck Motor Carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a Tow Truck Motor Carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) If required notifications to the Division of Motor Vehicles and local law enforcement is not completed as required by Sections 41-6a-1406 and 72-9-603, the Tow Truck Motor Carrier or operator may not collect any fees associated with the removal or begin charging storage fees as authorized under Sections 41-6a-1406 and 72-9-603 until the removal has been reported to the Motor Vehicle Division and the local law enforcement agency.

(4) If notification to the last known owner and lien holder is not made as required by this rule, the Tow Truck Motor Carrier may be subject to penalties as outlined in this rule.

(5) The tow truck motor carrier or the tow truck ~~driver~~operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(6) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, [www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396](http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396).

(b) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(c) The tow truck motor carrier, ~~driver~~operator(s) and vehicle(s) shall comply with 49 CFR Section 390, of the Federal Motor Carrier Safety Regulations, which are incorporated and made a part of this Rule by this reference.

(d) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) Inadequate certification for the ~~[driver]~~operator, truck or company, and;

(iii) Violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated or Utah Administrative Code.

(e) Complaints may be filed online with the Utah Department of Transportation at <http://www.udot.utah.gov>. Click on the Motor Carrier Division tab, Motor Carrier Contacts, and click on ~~[the Tow Truck Complaint form;]~~Motor Carrier Comments and Complaints; or by contacting the Motor Carrier Division at (801) 965-5892.

#### **R909-19-8. Certification.**

There are three (3) certifications required by the Department.

(1) Tow Truck ~~[Driver]~~Operator Certification.

(a) Effective July 1, 2004 all tow truck ~~[drivers]~~operators will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program;

(iv) Utah Safety Council;

(v) North American Towing Academy; or

(vi) Other driver testing certification programs approved by the Department to meet certification requirements, however, the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow Truck Motor Carriers shall ensure that all ~~[drivers]~~tow truck operators~~[are]~~:

(i) are properly trained to operate tow truck equipment;

(ii) are licensed, as required under Sections 53-3-101, through 53-3-909 Uniform Driver License Act; ~~and~~

(iii) [properly certified.]are complying with the requirements under Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the department of an tow truck operator whom is not in compliance with 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall be inspected and certified biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at ~~[<http://www.udot.utah.gov/index.php/m-c/tid=396>]~~<http://www.udot.utah.gov/main/f?p=100:pg:::1:T,V:396> or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle inspection certification shall be kept in the vehicle files and be available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification.

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

#### **R909-19-9. Certification Fees.**

The Department may charge Tow Truck Motor Carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

#### **R909-19-10. Information Required on Towing Receipt.**

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other storage area.

#### **R909-19-11. Non-Consent Towing, Storage, Administrative and Fuel Surcharge Fees.**

(1) The Motor Carrier Division is required to establish the allowable maximum fees for tow truck service, storage, the tow truck carrier's administrative fee for reporting the removal, and the fuel surcharge as per Utah State Code 72-9-603. The Towing Fees Schedule is published on the Division's website at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal ("Allowable Maximum Fees") shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The (CPI-W) is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web site at <http://www.bls.gov/cpi/tables.htm>.

(3) The Motor Carrier Division shall adjust the Allowable Maximum Fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the Allowable Maximum Fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

(b) The adjustment amount of the Allowable Maximum Fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) The first CPI-W based adjustment to the Allowable Maximum Fees shall be equal to the cumulative change in the CPI-W for 2014 and 2015.

(d) If the twelve[-]month change in the CPI-W from October to October is negative, the Allowable Maximum Fees shall remain unchanged until the next Adjustment Date.

(e) The Division of Motor Carriers shall round the Allowable Maximum Fees to the nearest whole number.

(4) A Tow Truck Motor Carrier may charge up to but not exceeding the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and Tow Truck Motor Carrier.

(f) Tow Truck Motor Carriers shall obey all applicable local municipal and county laws, pertaining to placement of signs, notification, and other towing related ordinances.

(g) Strobe lights are not allowed on Tow Trucks. The acceptable color for tow truck lights is amber.

(5) A Tow Truck Motor Carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow as indicated in the Towing Fee Schedule as published online at, <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(a) A Tow Truck Motor Carrier may charge a higher fee for inside storage per day per unit as indicated in the Towing Fees Schedule as published at on the Divisions website at, <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>. Only if requested by the owner(s), or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate based upon the Towing Fees Schedule as published online at, <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>.

(c) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

(6) A Tow Truck Motor Carrier may charge an administrative fee for reporting the removal of up to but not exceeding

the amount indicated in the Towing Fee Schedule as published online at, <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396> per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lienholder (if applicable).

(7) A Tow Truck Motor Carrier may charge a fuel surcharge When the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches \$3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 5% of the base tow rate. An additional 5% shall be allowed for each \$0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U.S. Energy Information Administration's website at [?] [~~<http://onto.eia.doe.gov/oog/info/wndp/diesel.asp>~~] <https://www.eia.gov/>.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a onetime fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

#### **R909-19-12. Towing and Storage Rates. Public Consent Tows.**

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

#### **R909-19-13. Rates and Storage Posting Requirements.**

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

#### **R909-19-14. Federal Motor Carrier Safety Requirements.**

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

#### **R909-19-15. Consumer Protection Information.**

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of Tow Truck Motor Carriers that are currently certified by the Department, the public can [e#] access this information online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396>, or by calling the Motor Carrier Division at (801) 965-4892.

#### **R909-19-16. Establishment of Tow Truck Steering Committee and Work Group.**

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

**R909-19-17. [~~Annual~~] Review of Rates, Fees and Certification Process.**

(1) During [~~the~~]a regularly scheduled Motor Carrier Advisory Board meeting [~~in August of each year~~], the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2)(a) Interested parties must notify the department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process. [The purpose of this meeting is to provide an opportunity and forum for interested parties to submit evidence in support of or against proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

~~\_\_\_\_\_ (3) Interested parties must notify the Department of their desire to appear and be heard at the August Advisory Board meeting by August 1 of each year to ensure placement on the agenda.]~~

**R909-19-18. Ability to Petition for Review.**

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a

cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

**R909-19-19. Record Retention.**

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

**R909-19-20. Life Essential Property.**

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

**KEY: safety regulations, tow trucks, towing, certifications**

**Date of Enactment or Last Substantive Amendment: [~~January 21, 2016~~]2018**

**Notice of Continuation: June 2, 2016**

**Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703**

**End of the Notices of Proposed Rules Section**



## NOTICES OF 120-DAY (EMERGENCY) RULES

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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.

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### Corrections, Administration **R251-115** Contract County Jail Programming Payment

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 42354  
FILED: 12/01/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to provide policy, procedures, requirements, and standards for the qualification and payment set by Section 64-13e-103 of the final state daily incarceration rate paid for Utah Department of Corrections approved programs for state inmates housed at contract jail facilities as funds are appropriated.

**SUMMARY OF THE RULE OR CHANGE:** This rule: 1) ties the programming rate, paid by the state to the county jails, to state statute rather than setting a rigid percentage of the daily incarceration rate; 2) clarifies that certain programs at county jails providing "pre-treatment" as a pre-requisite for entering a full program do not necessitate a licensed mental health professional, depending on curriculum; 3) changes the name

of the Department of Corrections' screening committee to the treatment review committee; 4) clarifies that the Sex Offender Task Force approves potential providers to provide services in contract county jails; 5) changes the name of peer reviews to program facility reviews; 6) clarifies roles of IPD (Institutional Programming Division) and IPP (Inmate Placement Program); 7) adds risk assessments to the list of items reviewed as part of compliance reviews; 8) matches administrative rule to UDC practice and policy in providing 30 working days for a facility to outline a plan to bring non-compliance issues back into compliance with contracting requirements; and 9) clarifies the appeal process for jails to appeal non-compliance findings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 64-13-10 and Subsection 64-13e-103(3)(b)(i)

**EMERGENCY RULE REASON AND JUSTIFICATION:** **REGULAR RULEMAKING PROCEDURES WOULD** cause an imminent peril to the public health, safety, or welfare; and cause an imminent budget reduction because of budget restraints or federal requirements; and place the agency in violation of federal or state law.

**JUSTIFICATION:** This rule dictates how dollars are to be spent in order to incarcerate and treat inmates in the various state-contracted county jails. It dictates how a county achieves and maintains "programming bed" status and how

different rates are set forth depending on programming vs. non-programming bed status. There are public safety implications due to the nature of incarceration, inmate management, and treatment. There are budget implications since this implements the expenditures authorized by the legislature to fund jail contracting beds. There is state law calling for this rule to specify how programming rates and determinations are to be implemented.

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The fiscal impact to the state is legislatively dictated and is covered by a general fund appropriation.
- ◆ **LOCAL GOVERNMENTS:** There is no fiscal impact to local governments.
- ◆ **SMALL BUSINESSES:** There is no fiscal impact to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no fiscal impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The fiscal impact to the state is legislatively dictated and is covered by a general fund appropriation. Businesses should not be impacted. If any impact, it would only be due to the state's policy decision to offer an incentive for jails to treat more inmates in their facilities, which could theoretically cut into the untreated clientele turning to private treatment providers in the community in the event they were left untreated and released from incarceration with an ongoing need for private sector treatment at a cost to the offender.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Steve Gehrke by phone at 801-545-5617, or by Internet E-mail at sgehrke@utah.gov

**EFFECTIVE:** 12/01/2017

**AUTHORIZED BY:** Rollin Cook, Executive Director

**R251. Corrections, Administration.**

**R251-115. Contract County Jail Programming Payment.**

**R251-115-1. Authority and Purpose.**

- (1) This rule is authorized under Sections 64-13e-103(3)(b)(i) and 64-13-10 of the Utah Code.

(2) The purpose of this rule is to provide policy, procedures, requirements and standards for the qualification and payment set by Section 64-13e-103 of Utah Code of the final state daily incarceration rate paid for Utah Department of Corrections approved programs for state inmates housed at contract jail facilities as funds are appropriated.

**R251-115-2. Definitions.**

(1) "contract state inmate" means an inmate who has been sentenced to the Utah Department of Corrections and is transferred to a contracted county jail facility for housing.

(2) "BOPP" means the Utah Board of Pardons and Parole.

(3) "DOPL" means the Division of Occupational and Professional Licensing.

(4) "final state daily incarceration rate" as defined by Section 64-13e-102(5) of the Utah Code.

(5) "IPP" means the Inmate Placement Program within the Utah Department of Corrections.

(6) "screening committee" means Utah Department of Corrections employees assigned to screen inmate-specific treatment and continuing care programs for validity and department need.

(7) "UDC/department" means the Utah Department of Corrections.

(8) "IPD" means the Institutional Programming Division.

**R251-115-3. Programming Rate.**

(1) Payment for UDC approved and legislatively funded substance abuse or sex offender programs in contract county facilities is pursuant to Section 64-13e-103 of the Utah Code. Establishing this rate is dependent upon the following conditions being met:

(a) the programming rate will only be paid for beds dedicated for department approved treatment. If a contract county jail includes a mix of treatment and non-treatment beds, the programming rate dictated by Section 64-13e-103 of Utah Code will only be paid for the beds dedicated to treatment.

(b) the department has sufficient funds appropriated to pay this rate for those beds in contract county facilities for department approved program services; and

(c) the department can pay this programming rate without impacting the total number of contract county jail beds the department can access during the fiscal year.

**R251-115-4. Program Requirements and Standards.**

(1) The following is the information that must be submitted to the department from a provider requesting consideration/approval for payment to provide a substance abuse or sex offender program at a contract county facility:

(a) evidence the program therapist(s) hold a valid license through DOPL to provide treatment in a mental health profession in the State of Utah in the event it is required based on the individual program's curriculum;

(b) documentation of program plans, progress reports, objectives, curriculum outline and performance measures;

(c) a copy of any assessment instruments that will be used;

(d) the number of inmates anticipated to participate in program services at any given time; and

(2) Pursuant to Section 64-13e-103 of the Utah Code, the program must be approved by the department, and approval is subject to the funds appropriated by the legislature.



(3) The department treatment review committee shall evaluate the information provided by a provider to determine its viability to assist the department in meeting its programming goals, based on the needs of the current inmate population.

**R251-115-5. Program Provider Requirements.**

(1) Potential providers for substance abuse or sex offender programs in contract county facilities shall:

(a) hold a valid license through DOPL to provide treatment in a mental health profession in the State of Utah, in the event it is required based on the individual program's curriculum;

(b) be pre-approved by the Sex Offender Task Force if providing sex offender treatment;

(c) adhere to the requirements as outlined by the laws of the State of Utah and department policy;

(d) appear in court or BOPP hearings, when there is reasonable notification, as needed without additional compensation; and

(e) provide reports as needed by the courts, BOPP or the department.

(2) County jail providers of sex offender treatment shall be in compliance with the UDC approved sex offender treatment program. Detailed structure/criteria of the UDC sex offender treatment program will be made available to county jail providers upon request. Approved county jail sex offender treatment programs shall be subject to at least yearly program facility reviews from the department's Sex Offender Treatment Program Director or designee.

(3) County jail providers of substance abuse treatment shall be in compliance with the UDC approved substance abuse treatment program. Detailed structure/criteria of the UDC substance abuse treatment program will be made available to county jail providers upon request. Approved county jail substance abuse treatment programs shall be subject to at least yearly program facility reviews from the department's Substance Abuse Treatment Program Director or designee or by a representative from the Division of Substance Abuse and Mental Health.

**R251-115-6. Program Compliance Review Process.**

(1) UDC program facility reviews shall be conducted at least yearly to review compliance with the UDC approved program curriculum and treatment protocols in accordance with the UDC sex offender treatment program or UDC substance abuse treatment program. Reviews shall include, but are not limited to:

(a) intake documents;

(b) discharge summaries;

(c) group and individual session notes;

(d) confidential notes; and

(e) risk assessments.

(2) A report showing the result of the program facility review will be submitted in writing to the jail commander within ten (10) working days of the review.

(3) If any noncompliance is cited, the jail commander shall have thirty (30) working days after receiving the report to submit a written plan to bring the program into compliance or to begin the appeal process.

**R251-115-7. Program Noncompliance Appeal Process.**

(1) The jail commander shall have thirty (30) working days to submit a written plan to bring the program into compliance

(a) after receiving the result of the program facility review citing noncompliance; or

(b) after a final decision is made on an appeal.

(2) The following is the appeal process for noncompliance:

(a) Within thirty (30) working days of receiving the report, the jail commander may appeal any cited noncompliance to the Director of IPD.

(b) The Director of IPD has five (5) working days after receiving the written plan or appeal to review, make a determination and inform the jail commander in writing of the noncompliance status.

(c) If the Director of IPD denies the appeal or rejects the written plan, the jail commander may appeal the decision in writing to the UDC IPP Director within five (5) working days of receiving the response from the Director of IPD.

(d) The UDC IPP Director has five (5) working days after receipt of the appeal from the jail commander to review and respond in writing to the jail commander with a copy of the response provided to the sheriff.

(e) Should the contract facility sheriff not be satisfied with the findings and response the jail commander has received after utilizing the two (2) level review/appeal process, the sheriff may request a review by the Executive Director of Corrections. This request shall:

(i) be in writing and be made within ten (10) working days of receipt of the decision received from the UDC IPP Director; and

(ii) specify why the responses provided in the first two (2) levels did not remedy the request.

(f) The Executive Director of Corrections has ten (10) working days to review the request from the sheriff and provide a final decision to the appeal. A copy of the Executive Director's decision will be distributed as appropriate.

**R251-115-8. Program Appropriated Funds: Notice of Funding.**

(1) Projections for the contract county facility programming funding shall be evaluated by UDC monthly by using the previous month's payments, the current month's billings, the remaining appropriated funds and the department's programming needs.

(2) The UDC shall notify each participating contract county facility if all appropriated funds have been expended.

(3) If the department projects these funds will be exhausted during the following month, those funds remaining shall be dispersed proportionally across all participating contract county facilities.

**KEY: jail programming, jail contracting, county jails**

**Date of Enactment or Last Substantive Amendment: December 1, 2017**

**Authorizing, and Implemented or Interpreted Law: 64-13e-102**

**Transportation, Motor Carrier  
R909-1  
Safety Regulations for Motor Carriers**

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 42335

FILED: 11/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Before the Department of Transportation (Department) may enforce the North American Standard Out-of-Service Criteria, Level VI Inspection Procedures, and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403, as federal law requires, it must adopt 49 CFR Part 385.4, which is the primary purpose of this amendment. This amendment also makes several technical and grammatical corrections.

**SUMMARY OF THE RULE OR CHANGE:** This emergency amendment adopts 49 CFR Part 385.4 by reference, and makes several technical and grammatical corrections.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 49 CFR Parts 350, 384, 385.4, 387-399, and 40

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

**JUSTIFICATION:** Federal regulations require the Department to adopt 49 CFR Part 385.4 by reference before amendments to federal regulations that affect the regulation of Electronic Logging Devices and Hours of Service Supporting Documents become effective 12/18/2017. Following the standard rulemaking procedure may not allow for an effective date that conforms with federal requirements. An emergency rule is needed to assure that the Department does not become non-compliant.

**TITLE OF MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Adds 49 CFR Part 385.4, published by Government Printing Office, 12/15/2015

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No cost or savings are anticipated with this rule change. No new requirements are created by this rule change that will impact the state budget.
- ◆ **LOCAL GOVERNMENTS:** No cost or savings are anticipated with this rule change. No new requirements are created by this rule change that will impact local governments.
- ◆ **SMALL BUSINESSES:** The Department anticipates that motor carriers that are small businesses will be affected by this rule change. The Electronic Logging Devices (ELD) and Hours of Service Supporting Documents, 80 FR 78292-01 states: In the Supplemental Notice of Proposed Rulemaking (SNPRM), the Federal Motor Carrier Safety Administration (FMCSA) took a very conservative approach to the cost of an ELD. It analyzed the Mobile Computing Platform 50, a higher-end Functional Movement System (FMS), and included installation, hardware costs, and monthly fees. However, by relying on performance standards and prescribing minimal requirements, FMCSA allowed for use of a basic ELD that would satisfy the rule. The SNPRM estimated an average cost of \$495 per Commercial Motor

Vehicle (CMV) on an annualized basis where the range is from \$165 to \$832 per CMV on an annualized basis. In the SNPRM, FMCSA analyzed a range of devices, the most expensive one being \$1,675 and the least expensive provided for free as part of a monthly service agreement.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost or savings are anticipated with this rule change. No new requirements are created by this rule change that will impact the budgets of persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The ELDs and Hours of Service Supporting Documents, 80 FR 78292-01 states: In the Supplemental Notice of Proposed Rulemaking (SNPRM), the Federal Motor Carrier Safety Administration (FMCSA) took a very conservative approach to the cost of an ELD. It analyzed the Mobile Computing Platform 50, a higher-end FMS, and included installation, hardware costs, and monthly fees. However, by relying on performance standards and prescribing minimal requirements, FMCSA allowed for use of a basic ELD that would satisfy the rule. The SNPRM estimated an average cost of \$495 per Commercial Motor Vehicle (CMV) on an annualized basis where the range is from \$165 to \$832 per CMV on an annualized basis. In the SNPRM, FMCSA analyzed a range of devices, the most expensive one being \$1,675 and the least expensive provided for free as part of a monthly service agreement. The Department of Workforce Services lists 52 motor carriers with offices in Utah that employ 50 or more persons, and 945 motor carriers with offices in Utah that employ fewer than 50 persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will have a fiscal impact on businesses. However, the fiscal cost should be less than the fiscal benefit that will result for the industry due to this amendment to the federal regulation, which this change to Rule R909-1 adopts by reference. In its Summary of Annualized Costs and Benefits included in SNPRM, the FMCSA estimates the total annualized cost to the motor carrier industry nationwide at \$1,836,000,000. However, the SNPRM estimates the total annualized benefit to the industry will be \$3,010,000,000. The difference is an annualized net benefit to the industry of \$1,174,000,000.

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

TRANSPORTATION  
MOTOR CARRIER  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov  
 ♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

EFFECTIVE: 11/17/2017

AUTHORIZED BY: Carlos Braceras, Executive Director

**R909. Transportation, Motor Carrier.**

**R909-1. Safety Regulations for Motor Carriers.**

**R909-1-1. Authority and Purpose.**

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

**R909-1-2. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, ~~Part 385.4~~, Parts 387 through 399, and Part 40, (October 1, 2014), as amended by the Federal Register through ~~[April 23, 2015]~~ December 16, 2015, are incorporated by reference, except for 49 CFR Parts 391.11(b)(1) and 391.49 as ~~[it applies]~~ they apply to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Utah Code Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

**R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.**

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

**R909-1-4. Implements of Husbandry.**

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must ~~[be in compliance]~~ comply with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

**KEY: trucks, transportation safety, implements of husbandry**

**Date of Enactment or Last Substantive Amendment: November 17, 2017**

**Notice of Continuation: August 30, 2016**

**Authorizing, and Implemented or Interpreted Law: 72-9-103; 72-9-104; 72-9-101; 72-9-301; 72-9-303; 72-9-701; 72-9-703**

**End of the Notices of 120-Day (Emergency) Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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.

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## Commerce, Occupational and Professional Licensing **R156-49** Dietitian Certification Act Rule

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42342  
FILED: 11/27/2017

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 49, provides for the certification and regulation of dietitians. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Section 58-49-3 provides that the Dietitian Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 49, with respect to dietitians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in February 2013, it has been amended one time in December 2013. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential applicants of the requirements for certification as allowed under statutory authority provided in Title 58, Chapter 49, with respect to dietitians. The rule should also be continued as it provides information to ensure applicants for certification are adequately trained and meet minimum requirements, and provides information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Allyson Pettley by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at [apettley@utah.gov](mailto:apettley@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/27/2017

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## Commerce, Occupational and Professional Licensing **R156-53** Landscape Architects Licensing Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 42344  
 FILED: 11/27/2017

AUTHORIZED BY: Mark Steinagel, Director  
 EFFECTIVE: 11/27/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 53, provides for the licensure and regulation of landscape architects. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-53-201(3) provides that the Landscape Architects Boards duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 53, with respect to landscape architects.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was last reviewed in February 2013, the rule has been amended one time in August 2014. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 53, with respect to landscape architects. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

Commerce, Occupational and  
 Professional Licensing  
**R156-82**  
 Electronic Prescribing Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 42344  
 FILED: 11/27/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 82, provides for the electronic generation and transmission of a prescription between a practitioner and a pharmacy. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Section 58-82-201 provides that the Division may make rules relating to this chapter. This rule was enacted to clarify the provisions of Title 58, Chapter 82, with respect to electronic prescribing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was originally enacted in March 2013, the Division has received one written comment, an email on 11/10/2015 from Arthur Hunsaker, Office of Legislative Research and General Counsel, in which he notified the Division of a Code of Federal Regulation (CFR) incorporation by reference that needed to be updated. As a result of Mr. Hunsaker's email, the Division filed a proposed rule filing in which the CFR reference was updated in DAR No. 39980; that rule filing was made effective by the Division on 02/08/2016.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides information and clarification of the electronic prescribing requirements contained in Title 58, Chapter 82.

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

COMMERCE  
 OCCUPATIONAL AND PROFESSIONAL  
 LICENSING

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Mark Steinagel by phone at 801-530-6292, by FAX at 801-530-6511, or by Internet E-mail at msteinagel@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/27/2017

Natural Resources, Water Rights  
**R655-5**  
Maps Submitted to the Division of  
Water Rights

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 42340  
FILED: 11/24/2017

**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 73-2-1(3)(b)(i) and Sections 73-3-2, 73-3-3, and 73-3-16 establish when maps must be submitted to the Division of Water Rights and the minimum standards that must be met for the maps to be accepted by the State Engineer.

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 past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
WATER RIGHTS  
ROOM 220  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Kent Jones, State Engineer/Director

EFFECTIVE: 11/24/2017

Natural Resources, Wildlife Resources  
**R657-23**  
Utah Hunter Education and  
Furharvester Education Programs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 42345  
FILED: 11/28/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-18, 23-14-19, and 23-19-11, the Wildlife Board is authorized to adopt rules to prescribe safety measures and provide the process for obtaining proof of successfully completing an approved hunter education course.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-23 were received since December 2012, when the rule was last reviewed. The rule has been amended during the five-year period and was presented at Regional Advisory Councils and approved by the Wildlife Board in accordance with Section 23-14-18.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-23 provides the procedures and requirements for presenting and obtaining proof of having successfully completed an approved hunter education course. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of hunter education programs.

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

1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Mike Fowlks, Deputy Director

EFFECTIVE: 11/28/2017

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**Natural Resources, Wildlife Resources**  
**R657-33**  
**Taking Bear**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42346  
FILED: 11/28/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-33 were received since December 2012, when the rule was last reviewed. The rule has been amended during the 5-year period and was presented at Regional Advisory Councils and approved by the Wildlife Board in accordance with Section 23-14-18.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-33 provides the procedures, standards, and requirements for taking and pursuing bear. The provisions adopted in this rule are effective in providing the standards and requirements for taking and pursuing bear. Continuation of this rule is necessary for the continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Mike Fowlks, Deputy Director

EFFECTIVE: 11/28/2017

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**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF FIVE-YEAR EXPIRATIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

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Corrections, Administration  
**R251-115**  
Contract County Jail Programming  
Payment

**FIVE-YEAR REVIEW EXPIRATION**  
DAR FILE NO.: 42349  
FILED: 11/30/2017

SUMMARY: The five-year review notice of continuation was not filed by the deadline. The rule expires as of 11/30/2017 and will be removed from the Administrative Code. (EDITOR'S NOTE: A 120-day (emergency) rule that is effective as of 12/01/2017 has been filed to put the rule back in place. It is under Filing No. 42354 in this issue, December 15, 2017, of the Bulletin.)

EFFECTIVE: 11/30/2017

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Governor, Economic Development  
**R357-9**  
Alternative Energy Development Tax  
Incentives

**FIVE-YEAR REVIEW EXPIRATION**  
DAR FILE NO.: 42350  
FILED: 11/30/2017

SUMMARY: The five-year review notice of continuation was not filed by the deadline. The rule expires as of 11/30/2017 and will be removed from the Administrative Code.

EFFECTIVE: 11/30/2017

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Treasurer, Unclaimed Property  
**R966-1**  
Requirements for Claims where no  
Proof of Stock Ownership Exists

**FIVE-YEAR REVIEW EXPIRATION**  
DAR FILE NO.: 42333  
FILED: 11/16/2017

SUMMARY: The five-year review notice of continuation was not filed by the deadline. The rule expires as of 11/16/2017 and will be removed from the Administrative Code.

EFFECTIVE: 11/16/2017

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**End of the Notices of Notices of Five Year Expirations Section**



## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal & Reenact  
REP = Repeal

### Governor

Economic Development  
No. 42185 (NEW): R357-21. Rural Jobs Tax Credit  
Published: 10/15/2017  
Effective: 11/28/2017

### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 42096 (AMD): R414-1-31. Withholding of Payments  
Published: 10/01/2017  
Effective: 11/27/2017

No. 42182 (R&R): R414-27. Medicaid Certification of Nursing Care Facilities  
Published: 10/15/2017  
Effective: 12/01/2017

No. 42183 (AMD): R414-514-2. Requirements for Additional Nursing Care Facility Programs or Additional Beds Within an Existing Program  
Published: 10/15/2017  
Effective: 12/01/2017

### Insurance

Administration  
No. 42175 (AMD): R590-244. Individual and Agency Licensing Requirements  
Published: 10/15/2017  
Effective: 11/21/2017

### Judicial Performance Evaluation Commission

Administration  
No. 42159 (AMD): R597-2. Administration of the Commission  
Published: 10/15/2017  
Effective: 11/28/2017

### Natural Resources

Wildlife Resources  
No. 42148 (AMD): R657-11. Taking Furbearers  
Published: 10/15/2017  
Effective: 11/25/2017

No. 42147 (AMD): R657-23. Utah Hunter Education Program  
Published: 10/15/2017  
Effective: 11/25/2017

### Tax Commission

Property Tax  
No. 42165 (AMD): R884-24P-53. 2017 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515  
Published: 10/15/2017  
Effective: 11/30/2017

**End of the Notices of Rule Effective Dates Section**



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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 December 01, 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/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>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
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	41796	NSC	06/29/2017	Not Printed
R25-7	Travel-Related Reimbursements for State Employees	41127	EMR	01/06/2017	2017-3/71
R25-7	Travel-Related Reimbursements for State Employees	41147	AMD	03/10/2017	2017-3/2
R25-7	Travel-Related Reimbursements for State Employees	41797	EMR	07/01/2017	2017-13/221
R25-7	Travel-Related Reimbursements for State Employees	41798	AMD	08/07/2017	2017-13/8
R25-14	Payment of Attorney's Fees in Death Penalty Cases	41124	5YR	01/06/2017	2017-3/79
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	41327	5YR	02/21/2017	2017-6/29
<u>Fleet Operations</u>					
R27-1	Definitions	41105	AMD	02/21/2017	2017-2/4
R27-3	Vehicle Use Standards	41106	AMD	02/21/2017	2017-2/6
R27-4	Vehicle Replacement and Expansion of State Fleet	41107	AMD	02/21/2017	2017-2/12
R27-7	Safety and Loss Prevention of State Vehicles	41609	AMD	07/11/2017	2017-11/11
R27-7	Safety and Loss Prevention of State Vehicles	42158	NSC	10/04/2017	Not Printed
<u>Inspector General of Medicaid Services (Office of)</u>					
R30-1	Office of Inspector General of Medicaid Services	41487	5YR	04/21/2017	2017-10/163
<u>Purchasing and General Services</u>					
R33-1	Utah Procurement Rule, General Procurement Provisions	41534	AMD	06/21/2017	2017-10/4
R33-4	Supplemental Procurement Procedures	41535	AMD	06/21/2017	2017-10/7
R33-4-101b	Vendors with Exclusive Authorization to Bid	41292	NSC	03/06/2017	Not Printed
R33-5	Other Standard Procurement Processes	41536	AMD	06/21/2017	2017-10/10
R33-5	Other Standard Procurement Processes	41665	NSC	06/26/2017	Not Printed
R33-6	Bidding	41539	AMD	06/21/2017	2017-10/15
R33-7	Request for Proposals	41540	AMD	06/21/2017	2017-10/18
R33-8	Exceptions to Standard Procurement Process	41544	AMD	06/21/2017	2017-10/27
R33-8-102	Adding Additional Funds to a Contract	41023	AMD	02/02/2017	2016-24/4
R33-9	Cancellations, Rejections, and Debarment	41545	AMD	06/21/2017	2017-10/31
R33-11	Form of Bonds	41546	AMD	06/21/2017	2017-10/35
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	41547	AMD	06/21/2017	2017-10/37
R33-13	General Construction Provisions	41548	AMD	06/21/2017	2017-10/43
R33-15	Procurement of Design Profession Services	41549	AMD	06/21/2017	2017-10/47
R33-16	Protests	40898	AMD	01/20/2017	2016-22/10
R33-16	Protests	41550	AMD	06/21/2017	2017-10/48
R33-17	Procurement Appeals Board	41551	AMD	06/21/2017	2017-10/51
R33-18	Appeals to Court and Court Proceedings	41552	AMD	06/21/2017	2017-10/54
R33-19-101	Encouraged to Obtain Legal Advice From Legal Counsel	41553	AMD	06/21/2017	2017-10/55
R33-21-201e	Division May Charge Administrative Fees on State Cooperative Contracts - Prohibition Against Other Procurement Units Charging Fees on State Contracts	41554	AMD	06/21/2017	2017-10/56
R33-25	Executive Branch Insurance Procurement	41555	AMD	06/21/2017	2017-10/57
R33-26	State Surplus Property	41799	AMD	10/03/2017	2017-13/14
<u>Records Committee</u>					
R35-1-2	Procedures for Appeal Hearings	41478	AMD	06/22/2017	2017-9/2

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R37-3	Risk Management Adjudicative Proceedings	41603	5YR	05/05/2017	2017-11/210
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<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	41120	5YR	01/03/2017	2017-2/45
<u>Animal Industry</u>					
R58-1	Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals	41168	5YR	01/12/2017	2017-3/79
R58-1	Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals	42154	NSC	10/10/2017	Not Printed
R58-3	Brucellosis Vaccination Requirements	41164	5YR	01/12/2017	2017-3/80
R58-6	Poultry	41165	5YR	01/12/2017	2017-3/80
R58-11	Slaughter of Livestock and Poultry	40951	AMD	01/12/2017	2016-23/16
R58-11	Slaughter of Livestock and Poultry	41372	NSC	04/05/2017	Not Printed
R58-11	Slaughter of Livestock and Poultry	41467	NSC	05/15/2017	Not Printed
R58-18	Elk Farming	41162	5YR	01/12/2017	2017-3/81
R58-19	Compliance Procedures	41194	5YR	01/18/2017	2017-4/58
R58-21	Trichomoniasis	41471	AMD	06/14/2017	2017-9/5
R58-22	Equine Infectious Anemia (EIA)	41163	5YR	01/12/2017	2017-3/81
R58-23	Equine Viral Arteritis (EVA)	41167	5YR	01/12/2017	2017-3/82
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R52-7	Horse Racing	41102	AMD	03/06/2017	2017-1/4
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R65-11	Utah Sheep Marketing Order	41859	5YR	06/29/2017	2017-14/53
R65-13	Utah's Own	42033	NEW	11/02/2017	2017-18/6
<u>Plant Industry</u>					
R68-7	Utah Pesticide Control Rule	42153	NSC	10/10/2017	Not Printed
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	41997	5YR	08/03/2017	2017-17/211
R68-15	Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)	41998	NSC	09/22/2017	Not Printed
R68-19	Compliance Procedures	41195	5YR	01/18/2017	2017-4/59
R68-23	Utah Firewood Quarantine	41675	NEW	08/03/2017	2017-12/8
<u>Regulatory Services</u>					
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R70-101	Bedding, Upholstered Furniture and Quilted Clothing	41371	NSC	04/05/2017	Not Printed
R70-201	Compliance Procedures	41160	5YR	01/12/2017	2017-3/82
R70-320	Minimum Standards for Milk for Manufacturing Purposes, Its Production and Processing	41166	5YR	01/12/2017	2017-3/83
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R70-360	Procedure for Obtaining a License to Test Milk for Payment	41161	5YR	01/12/2017	2017-3/84
R70-520	Standard of Identity and Labeling Requirements for Honey	41861	5YR	06/29/2017	2017-14/54
R70-530	Food Protection	41344	5YR	03/06/2017	2017-7/81
R70-530	Food Protection	41370	NSC	04/05/2017	Not Printed
R70-550	Utah Inland Shellfish Safety Program	41158	5YR	01/12/2017	2017-3/84



R70-560	Inspection and Regulation of Cottage Food Production Operations	41157	5YR	01/12/2017	2017-3/85
R70-960	Weights and Measures Fee Registration	42030	NSC	09/05/2017	Not Printed

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R81-4	Retail Licenses	40924	NEW	01/03/2017	2016-22/17
R81-8	Manufacturer Licenses (Distillery, Winery, Brewery)	40923	AMD	01/03/2017	2016-22/19

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Administration

R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	40950	AMD	01/20/2017	2016-23/19
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	41466	5YR	04/10/2017	2017-9/41
R105-1-6	Small Purchases	41295	NSC	03/06/2017	Not Printed

AUDITOR

Administration

R123-3	State Auditor Adjudicative Proceedings	41764	5YR	06/07/2017	2017-13/230
R123-4	Public Petitions for Declaratory Orders	41765	5YR	06/07/2017	2017-13/230
R123-5	Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations	41766	5YR	06/07/2017	2017-13/231
R123-5	Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations	41844	AMD	11/01/2017	2017-14/6

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-3	Use of Magnetometers on Capitol Hill	41573	5YR	05/02/2017	2017-11/211
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COMMERCE

Consumer Protection

R152-6	Utah Administrative Procedures Act Rules	40920	AMD	01/09/2017	2016-22/21
R152-34	Postsecondary Proprietary School Act Rules	41610	5YR	05/08/2017	2017-11/212

Corporations and Commercial Code

R154-1	Central Filing System for Agriculture Product Liens	42079	5YR	09/11/2017	2017-19/120
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Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	41299	AMD	04/11/2017	2017-5/8
R156-5a	Podiatric Physician Licensing Act Rule	41047	AMD	02/07/2017	2017-1/11
R156-5a	Podiatric Physician Licensing Act Rule	41999	AMD	10/10/2017	2017-17/2
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	41198	5YR	01/19/2017	2017-4/59
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	41260	AMD	03/27/2017	2017-4/4
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	42018	AMD	10/10/2017	2017-17/4
R156-16a	Optometry Practice Act Rule	41275	5YR	02/02/2017	2017-5/61
R156-16a-304	Continuing Education	41110	AMD	02/21/2017	2017-2/18
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	41706	5YR	05/30/2017	2017-12/35

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R156-22-302c	Qualifications for Licensure - Experience Requirements	41286	NSC	03/06/2017	Not Printed
R156-24b-102	Definitions	41474	AMD	06/08/2017	2017-9/8
R156-26a	Certified Public Accountant Licensing Act Rule	42082	AMD	11/07/2017	2017-19/6
R156-31b-502	Unprofessional Conduct	41308	NSC	03/06/2017	Not Printed
R156-31b-703b	Scope of Nursing Practice Implementation	41113	NSC	01/18/2017	Not Printed
R156-37	Utah Controlled Substances Act Rule	41289	5YR	02/06/2017	2017-5/61
R156-37f-301	Access to Database Information	41339	NSC	04/05/2017	Not Printed
R156-37f-303	Access to Opioid Prescription Information Via an Electronic Data System	41265	NSC	02/23/2017	Not Printed
R156-38b	State Construction Registry Rule	41349	AMD	05/08/2017	2017-7/4
R156-40	Recreational Therapy Practice Act Rule	41705	AMD	07/25/2017	2017-12/10
R156-42a-304	Continuing Education	41473	AMD	06/08/2017	2017-9/9
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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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	41304	R810-6	5YR	02/13/2017	2017-5/70	
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	41952	R651-412-4	AMD	09/21/2017	2017-16/106
	41717	R651-603	AMD	07/25/2017	2017-12/22
	41716	R651-606	AMD	07/25/2017	2017-12/23
	41042	R651-614-5	AMD	02/16/2017	2016-24/37
	41044	R651-633	AMD	02/16/2017	2016-24/38
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	41615	R671-202	AMD	09/20/2017	2017-11/177
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	41240	R671-303	5YR	01/30/2017	2017-4/81
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	41238	R671-316	5YR	01/30/2017	2017-4/84
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physical therapist assistant

Commerce, Occupational and Professional Licensing	41474	R156-24b-102	AMD	06/08/2017	2017-9/8
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physical therapy

Commerce, Occupational and Professional Licensing	41474	R156-24b-102	AMD	06/08/2017	2017-9/8
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