

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

### **Notice for May 2019 Medicaid Rate Changes**

Effective May 1, 2019, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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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 March 16, 2019, 12:00 a.m., and April 01, 2019, 11:59 p.m. are included in this, the April 15, 2019, 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 May 15, 2019. 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 August 13, 2019, 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**

**Education, Administration  
R277-102  
Adjudicative Proceedings**

**NOTICE OF PROPOSED RULE**

(Repeal)  
DAR FILE NO.: 43609  
FILED: 03/29/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-102 was adopted to establish procedures for proceedings under the Utah Administrative Procedures Act (APA). However, most State Board of Education (Board) adjudicative proceedings are covered by exceptions to the APA, and accordingly, this rule has rarely come into play. Because of the limited need to conduct hearings under the APA, the Board recommends the repeal of this rule. There is sufficient guidance under the APA itself to govern hearings under the act in the event one is necessary, as well as a reconsideration of Board action.

**SUMMARY OF THE RULE OR CHANGE:** The Board recommends repealing Rule R277-102 because the rule is no longer necessary. Therefore, this rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Section 63G-4-203 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule repeal is not expected to have any fiscal impact on state government revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.
- ◆ **LOCAL GOVERNMENTS:** This rule repeal is not expected to have any material impact on local governments' revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.
- ◆ **SMALL BUSINESSES:** This rule repeal is not expected to have any material fiscal impact on small businesses' revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule repeal is not expected to have any material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses. The Policy Advisor at the Utah State Board of Education, Jeffrey Van Hulten, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>



Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

~~[R277-102. Adjudicative Proceedings.~~

~~R277-102-1. Definitions.~~

- ~~A. "Board" means the Utah State Board of Education.~~
- ~~B. "Default" means the failure of a party to an administrative proceeding to meet the requirements or timelines of the proceeding.~~
- ~~C. "Presiding officer" means, in addition to the definition of 63G-4-103(1)(h)(i), the Chair of the Board or any person designated to serve as the presiding officer.~~
- ~~D. "State Superintendent" means the State Superintendent of Public Instruction.~~
- ~~E. "USOE" means the Utah State Office of Education.~~

~~R277-102-2. Authority and Purpose.~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities, and Section 63G-4-203 which directs agencies to make rules regarding~~

~~adjudicative proceedings following the general designation of Board hearings as informal.~~

~~B. The purpose of this rule is to specify how adjudicative proceedings are conducted before the Board. All procedures shall be consistent with Title 63G, Chapter 4. This rule does not govern Board actions under Subsections 63G-4-102(2)(a),(d),(g),(j),(l), and (p).~~

~~R277-102-3. Commencement of Adjudicative Proceedings.~~

~~A. Any party to an initial determination made by the Board may initiate an adjudicative proceeding under the Administrative Procedures Act and this rule by filing a request for Board action on a form, Request for Board Action, provided by the Board, or by submitting in writing the information required on the form.~~

~~B. Each Notice of Board Action and Request for Board Action filed is assigned a number consisting of the year in which the notice or request is filed and another number showing its numerical position among the hearings filed during the year.~~

~~R277-102-4. Designation of Adjudicative Proceedings as Formal or Informal.~~

~~All proceedings conducted before the Board are initially designated as informal. The presiding officer designated for the proceeding may convert an informal proceeding to a formal proceeding and vice versa under Subsection 63G-4-202(3).~~

~~R277-102-5. Procedures for Informal Adjudicative Proceedings.~~

~~A. The Board may hold a hearing if a request for a hearing is received by the Board within 20 business days of Board action.~~

~~B. The Board shall make appropriate arrangements for the hearing including:~~

- ~~(1) determining the date of the hearing;~~
- ~~(2) designating a Board member, USOE employee or another individual as a hearing officer;~~
- ~~(3) designating the hearing location and other necessary information; or~~
- ~~(4) establishing timelines consistent with Section 63G-4-301.~~

~~C. The Board may delegate the hearing arrangements and procedures to a hearing officer.~~

~~D. The Board may, on a case by case basis, determine if an informal hearing may be held electronically.~~

~~E. The Board shall maintain a record of all aspects of an informal adjudicative proceeding.~~

~~F. The Board shall issue a decision no later than 120 days from the receipt of the Request for Agency Action and following the conclusion of an informal proceeding.~~

~~R277-102-6. Procedures for Formal Adjudicative Proceedings.~~

~~A. The Board may designate an adjudicative proceeding as formal following a Request for Board Action.~~

~~B. If the Board designates a proceeding as formal, the Board may add any of the following procedures, as appropriate, to the hearing procedures designated in R277-102-5:~~

- ~~(1) responsive pleadings;~~
- ~~(2) discovery for parties;~~
- ~~(3) the right to subpoena witnesses;~~
- ~~(4) intervention by third parties;~~
- ~~(5) an electronic recording of the complete proceeding; and~~

~~(6) a written final decision consistent with Subsection 63G-4-208(1).~~

~~C. For both informal and formal adjudicative proceedings, the Board designated presiding officer or hearing officer shall have considerable discretion in managing and making procedural and evidentiary decisions throughout the hearing process.~~

**~~R277-102-7. Default.~~**

~~A. A presiding officer or hearing officer designated for a formal or informal hearing may recommend a default to the Board consistent with deadlines set by the presiding officer and the provisions of Section 63G-4-209.~~

~~B. A defaulted party may seek to have a default set aside consistent with Subsection 63G-4-209(3) and timelines set by the presiding officer.~~

**~~R277-102-8. Recommendation to Board.~~**

~~A. A written hearing report, including findings of fact and conclusions of law, and presiding officer decision shall be submitted to the Board as a recommendation.~~

~~B. The Board's final decision following acceptance of written findings is the final administrative decision on the issue, subject to a Request for Reconsideration under Section 63G-4-302.~~

**~~KEY: administrative procedures, rules and procedures~~**

**~~Date of Enactment or Last Substantive Amendment: February 7, 2012~~**

**~~Notice of Continuation: April 4, 2014~~**

**~~Authorizing, and Implemented or Interpreted Law: 63G-4-101 through 63G-4-302; 63G-4-405; 63G-4-503; 53E-3-401(4); Art X Sec 3]~~**

## Education, Administration

### **R277-105**

## Recognizing Constitutional Freedoms in the Schools

### **NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 43610

FILED: 03/29/2019

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-105 is up for its five-year review and the State Board of Education (Board) recommends repealing the rule. This rule contains restatements of constitutional protections to students established in federal and state case law. Rule R277-105 neither grants nor takes away any student or parent constitutional rights or privileges but was originally drafted to provide guidance to LEAs who may not have sufficient familiarity with the principles.

SUMMARY OF THE RULE OR CHANGE: The Board recommends this rule be repealed because administrative rules are not designed to provide legal guidance, but to establish requirements within an agency's authority and expertise. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Subsection 53G-10-204(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule repeal is not expected to have any fiscal impact on state government revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.

◆ LOCAL GOVERNMENTS: This rule repeal is not expected to have any material impact on local governments' revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.

◆ SMALL BUSINESSES: This rule repeal is not expected to have any material fiscal impact on small businesses' revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule repeal is not expected to have any material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because it is no longer necessary and, therefore, recommended for repeal.

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: There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses. The Policy Advisor at the Utah State Board of Education, Jeffrey VanHulst, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

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**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019**

**AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy**

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**[R277-105. Recognizing Constitutional Freedoms in the Schools.**

**R277-105-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Conscience" means a standard based upon learned experiences, a personal philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.
- C. "Discretionary time" for students means school-related time that is not instructional time. It includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities.
- D. "Exercise of religious freedom" means the right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.
- E. "Guardian" means a person who has been granted legal guardianship of a child in accordance with state law.
- F. "Instructional time" means time during which a school is responsible for a student and the student is required or expected to be actively engaged in a learning activity. It includes instructional activities in the classroom or study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.
- G. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- H. "Parent" means a biological or adoptive parent who has legal custody of a child.
- I. "USOE" means the Utah State Office of Education.

**R277-105-2. Authority and Purpose.**

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. The rule is based upon the First Amendment to the Constitution of the United States; Article I, Section 4, Article III, Sections 1 and 4, and Article X, Section 1 of the Utah State Constitution which speak of rights of conscience, perfect toleration of religious sentiment, the free exercise of religion, and prohibitions against the establishment of religion or the imposition of sectarian control in the schools; Subsection 53G-10-204(3), which directs that curriculum promoting respect for parents and home, morality, qualities of character and respect for and an understanding of the Constitutions

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

of the United States and the State of Utah be taught in connection with regular school work; and Sections 53G-10-202 through 53G-10-203, which provide direction for the USOE and LEAs regarding curriculum, freedom of conscience, exercise of religious freedoms, and student expression.

B. The purpose of this rule is to help public school officials to protect and accommodate individual rights in the operation of Utah's schools.

#### **R277-105-3. Interpretive Context for the Rule.**

A. The Board recognizes the importance of religious belief and practice and other expressions of conscience in the lives of many people, the critical role that such beliefs have played in the development of societies and cultures throughout the world, and the influence that these beliefs continue to have on concepts and interpretations relating to school curricula. The Board also recognizes that Utah is becoming a pluralistic society with an increasing diversity of peoples and beliefs, and that this diversity will require the development of greater tolerance and understanding among the people of the state.

B. The Constitution of Utah prohibits the use of the powers of government to encourage or discourage religious beliefs or practices, or to repress rights of conscience. Given their unique relationship to children attending the public schools, school officials must be particularly careful to remain neutral in matters relating to religion, while striving to accommodate the religious beliefs and practices and the freedom of conscience of students and their parents.

C. Court decisions interpreting Constitutional establishment clause provisions are a commonly used source for information about acceptable relationships between government and religion. The Board has attempted to reflect applicable rulings in the development of this rule. Because of the relative absence of court interpretations concerning the meaning of the Utah Constitution as applied to the public schools, this rule places primary reliance upon interpretations of related clauses in the First Amendment to the United States Constitution. In applying the rule, school officials may presume that any accommodation of religion which would be permissible under applicable rulings interpreting the First Amendment to the United States Constitution, and has not been prohibited in a decision interpreting Utah law which is binding upon the Utah public education system, is permissible in the schools of the state of Utah.

#### **R277-105-4. Creation and Implementation of Curriculum.**

A. A study, performance, or display which includes examination of or presentations about religion, religious thought or expression, or the influence thereof in music, art, literature, law, politics, history, or any other portion of the curriculum may be undertaken in the public schools so long as it is designed to achieve permissible educational objectives and is presented within the context of the approved curriculum.

B. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

C. No aspect of cultural heritage, political or moral theory, or societal value may be either included or excluded from consideration in the public schools primarily because it explicitly or implicitly contains theistic, agnostic, or atheistic assumptions.

D. An analysis of religion, deity, an absolute moral principle, or any other concept that may contain a theistic, agnostic, or non-theistic assumption, may be presented when included as an appropriate component or aspect of a broader study, display, presentation, or discussion regarding cultural heritage, political theory, moral theory or a societal value.

#### **R277-105-5. Requests for Waiver of Participation in School Activities.**

A. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:

(1) it would require an affirmation or denial of a religious belief or right of conscience;

(2) it would require participation in a practice forbidden by a religious belief or practice, or right of conscience; or

(3) it would bar participation in a practice required by a religious belief or practice, or right of conscience.

B. A claimed infringement under Subsection A must rise to a level of belief that the requested conduct violates a superior duty which is more than personal preference.

C. If a minor student seeks a waiver of participation under Subsection A, the school shall promptly notify the student's parent or legal guardian about the student's choice. In the event of a conflict, a parent's or legal guardian's wishes shall prevail over those of a minor student.

D. A parent, guardian, or secondary student requesting a waiver of participation under Subsection A may also suggest an alternative that requires reasonably equivalent performance by the student of the objective of the curriculum or activity that is believed to be objectionable.

E. In responding to a request under Subsection A, the school shall:

(1) waive participation by the student in the objectionable curriculum or activity;

(2) provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or

(3) deny the request.

F. A request for waiver of required participation shall not be denied unless the responsible school official finds that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest.

G. In responding to a request under Subsection A, the school shall not require an affected student to accept a sub-standard or educationally deficient alternative that is unreasonably burdensome.

H. Permitting the submission of requests for participation waivers, and the provision of reasonable alternatives, is intended to facilitate appropriate protection and accommodation of a requesting party's asserted right of conscience or exercise of religious freedom, and shall not be considered to be an attempt by a school official to endorse, promote or disparage a particular religious or non-religious viewpoint.

**R277-105-6. Student Expression.**

~~\_\_\_\_\_ A. A student participating in a classroom discussion, presentation, or assignment, or in a school sponsored activity, shall not be prohibited from expressing personal beliefs of any kind nor be penalized for so doing, unless the conduct:~~

- ~~\_\_\_\_\_ (1) unreasonably interferes with order or discipline;  
 \_\_\_\_\_ (2) threatens the well-being of persons or property; or  
 \_\_\_\_\_ (3) violates concepts of civility or propriety appropriate in a school setting.~~

~~\_\_\_\_\_ B. Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time. Individuals not currently enrolled as students in the school may neither conduct nor regularly attend the activities. School officials may neither conduct nor actively participate in the activities, but may be present as necessary to ensure proper observance of school rules and may limit or prohibit student activities under this section which:~~

- ~~\_\_\_\_\_ (1) unreasonably interfere with the ability of school officials to maintain order and discipline;  
 \_\_\_\_\_ (2) threaten the well-being of persons or property; or  
 \_\_\_\_\_ (3) violate concepts of civility or propriety appropriate in a school setting.~~

**R277-105-7. Religious Services and Church-Owned Facilities.**

~~\_\_\_\_\_ A. Public school officers and employees may neither authorize nor encourage prayer or devotional activities in connection with any class, program, presentation or other student activity which is under the control, direction, or sponsorship of an LEA or public school. This Subsection shall not act to restrict student rights under R277-105-6.~~

~~\_\_\_\_\_ B. No school employee or student may be required to attend or participate in any religious service, whether in an individual capacity or as a member of a performing group, regardless of where or when the service is held. No penalty may be assessed for failure to attend or perform in such an activity.~~

~~\_\_\_\_\_ C. Subject to the requirements of Subsection R277-105-5, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:~~

- ~~\_\_\_\_\_ (1) the performance is not part of a religious service;  
 \_\_\_\_\_ (2) the activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and  
 \_\_\_\_\_ (3) the activity is open to the general public.~~

~~\_\_\_\_\_ D. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school personnel.~~

~~\_\_\_\_\_ E. Religious activities may be conducted on the same basis as any other non-school activity outside of regular school hours.~~

~~\_\_\_\_\_ F. Subject to the requirements of R277-105-5, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture, or history.~~

**R277-105-8. Expressions of Personal Belief by Employees.**

~~\_\_\_\_\_ A. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an employee attempt to use his position to influence a student regarding the student's religious beliefs or lack thereof.~~

~~\_\_\_\_\_ B. Even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of a belief or perspective; but may, by exercising due caution, explain or define personal religious beliefs or perspectives, or opinions about the rightfulness or wrongfulness of his/her own, or any other person's religious beliefs or lack thereof.~~

**R277-105-9. Mandatory Responsibilities of LEAs.**

~~\_\_\_\_\_ A. Supervision and Training~~

~~\_\_\_\_\_ (1) Local school boards and their employees shall cooperate and share responsibilities in implementing Sections 53G-10-204, et seq.~~

~~\_\_\_\_\_ (2) Each local school board shall adopt and implement policies and training in accordance with this rule and the provisions of Sections 53G-10-204 et seq., to include the following:~~

~~\_\_\_\_\_ (a) the person to whom a request for waiver of participation or substitution of another activity is to be directed;~~

~~\_\_\_\_\_ (b) how notice is to be given to the parent of a minor secondary student who makes a request pursuant to an exercise of freedom of conscience or exercise of religious freedom under Sections 53G-10-205 and 53G-10-203;~~

~~\_\_\_\_\_ (c) how appeals may be taken from a decision to require participation in any curriculum or activity after a request to either waive participation or allow substitution of another activity has been made by a parent, legal guardian or secondary student, including suspension of participation requirements until a ruling on the appeal is issued;~~

~~\_\_\_\_\_ (d) establish procedures whereby students are not compelled to participate in any curriculum or activity after a request to waive participation or allow substitution of another activity has been submitted unless it is determined that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest; and~~

~~\_\_\_\_\_ (e) establish procedures whereby any portion of any curriculum or activity that is repeatedly alleged to interfere with the rights of conscience or exercise of religious freedom of students, parents or legal guardians shall be evaluated to determine whether the educational objectives could be achieved by less intrusive means.~~

**KEY: freedom of religion, public education**

**Date of Enactment or Last Substantive Amendment: June 9, 2014**

**Notice of Continuation: April 4, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-10-204(3); 53G-10-202 through 53G-10-205]**

**Education, Administration**  
**R277-115**  
**LEA Supervision and Monitoring**  
**Requirements of Third Party Providers**  
**and Contracts**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43619

FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the October Law and Licensing Committee meeting, the Committee reviewed Utah State Board of Education (Board) Rule R277-417 regarding local education agencies (LEAs) requirements to supervise and monitor third party providers, and requested Section R277-417-4 be moved into its own rule regarding LEA supervision and monitoring of contracts to provide assurance regarding compliance.

**SUMMARY OF THE RULE OR CHANGE:** This rule is established from parts of Rule R277-417 dealing with LEAs supervision and monitoring of contracts to provide assurance regarding compliance that are being moved into their own rule (R277-115). This rule is focused on LEAs and third party providers. This rule clarifies that LEA contracts with third party providers must include language whereby the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service is in compliance with statute and Board rule. This requirement adds specificity for compliance of third party providers, but LEAs were already required to ensure compliance so the only substantive change may be additional language in contracts between LEAs and third party providers.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53E-3-401(10) and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule will not have a fiscal impact on state government revenues or expenditures. Any state responsibility within this rule already was in place in Rule R277-417. For these reasons, the establishment of this rule will not have a fiscal impact to the state.

◆ **LOCAL GOVERNMENTS:** This new rule will not have a fiscal impact on local governments' revenues or expenditures. This rule clarifies that LEA contracts with third party providers must include language whereby the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service is in

compliance with statute and Board rule. This requirement adds specificity for compliance, but LEAs were already required to ensure compliance so the only substantive change may be additional language in contracts between LEAs and third party providers.

◆ **SMALL BUSINESSES:** This new rule will not have a fiscal impact on small businesses' revenues or expenditures. This rule clarifies that LEA contracts with third party providers must include language whereby the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service is in compliance with statute and Board rule. This requirement adds specificity for compliance of third party providers, but LEAs were already required to ensure compliance so the only substantive change may be additional language in contracts between LEAs and third party providers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule will not have a fiscal impact on other individuals' revenues or expenditures. This rule clarifies that LEA contracts with third party providers must include language whereby the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service is in compliance with statute and Board rule. This requirement adds specificity for compliance of third party providers, but LEAs were already required to ensure compliance so the only substantive change may be additional language in contracts between LEAs and third party providers.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This proposed rule has no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis. Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**R277. Education, Administration.**  
**R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts.**

**R277-115-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (b) Subsection 53E-3-401(10), which allows the Board to require an LEA to require in a contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:
    - (i) Titles 53E, 53F, and 53G; and
    - (ii) Board rule.
- (2) The purpose of this rule is:
  - (a) to provide standards for an LEA working with a third party provider to ensure the third party provider complies with applicable law.

**R277-115-2. Definitions.**

- (1) "Educational good or service" means the same as that term is defined in Section 53E-3-401.
- (2) "Third party provider" means a third party who provides an educational good or service on behalf of an LEA.

**R277-115-3. Third Party Provider Provision of Services.**

- (1) An LEA that contracts with a third party provider to provide an educational good or service on behalf of the LEA shall:
  - (a) require in the LEA's contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:
    - (i) Titles 53E, 53F, and 53G; and
    - (ii) Board rule;
  - (b) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of this rule;
  - (c) develop a written monitoring plan to supervise the educational good or service provided by the third party provider;
  - (d) ensure the third party provider is complying with:
    - (i) federal law;
    - (ii) state law; and
    - (iii) Board rules;

(e) monitor and supervise all activities of the third party provider related to the educational good or service provided by the third party provider to the LEA; and

(f) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

(2) An LEA shall:

(a) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

(3) The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

(a) the LEA fails to comply with the provisions of this rule; and

(b) the repayment is made in accordance with the procedures established in R277-114.

**KEY: third party providers, contracts, monitoring**

**Date of Enactment or Last Substantive Amendment: 2019**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4) and (10)**

## Education, Administration R277-119 Discretionary Funds

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 43618

FILED: 04/01/2019

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule requires State Board of Education (Board) review and approval of discretionary funds including land exchange funds, mineral lease funds, and carryover funds. This practice is part of internal policy and procedures, and thus this rule is not needed. The Board recommends repealing this rule.

**SUMMARY OF THE RULE OR CHANGE:** It has been determined that this rule is not necessary and should be repealed. Therefore, this rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Subsection 53C-3-203(4)(b)(iii) and Subsection 53E-3-401(4) and Subsection 59-21-2(2)(e)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The repeal of this rule will not have a fiscal impact on state government revenues or

expenditures. This repeal will not change current practice and, therefore, it will not have any fiscal impact.

◆ **LOCAL GOVERNMENTS:** The repeal of this rule will not have a fiscal impact on local governments' revenues or expenditures. This repeal will not impact current practice. This rule outlines a procedure for the Board and thus does not affect local governments.

◆ **SMALL BUSINESSES:** The repeal of this rule will not have a fiscal impact on small businesses' revenues or expenditures. This rule outlines a procedure for the Board and thus does not affect small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repeal of this rule will not have a fiscal impact on other individuals' revenues or expenditures. This rule outlines a procedure for the Board and thus does not affect other entities.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy



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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**[R277-119. Discretionary Funds:**

**R277-119-1. Definitions:**

- ~~A. "Board" means the Utah State Board of Education.~~
- ~~B. "Board discretionary funds" means:~~
  - ~~(1) Land exchange funds are funds appropriated to the Board from the account described in Section 53C-3-203;~~
  - ~~(2) Mineral lease funds are funds identified in Section 59-21-1 and directed to the Board in Section 59-21-2(2)(c); and~~
  - ~~(3) State carryover funds are funds appropriated by the Legislature, maintained by the Board, and carried over from one fiscal year to the next for discretionary use.~~
- ~~C. "State Superintendent of Public Instruction (Superintendent)" means the executive officer of the Board and serves at the pleasure of the Board.~~

**R277-119-2. Authority and Purpose:**

- ~~A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; Subsection 59-21-2(2)(c) in which the Legislature appropriates 2.25 percent of all deposits made to Mineral Lease Account to the Board for use consistent with Subsection 53C-3-203(4)(b)(iii); and Subsection 53C-3-203(4)(b)(iii) in which the Legislature appropriates funds for the Board's use.~~
- ~~B. The purpose of this rule is to provide for Board review and approval of funds received by the Board for identified purposes.~~

**R277-119-3. Board Review and Use of Discretionary Funds:**

- ~~A. The Superintendent shall present an annual projection of revenues and expenditures of Board discretionary funds as part of the annual budget proposed to the Board.~~
- ~~B. The Superintendent shall submit to the Board for review a quarterly summary of actual versus projected expenditures from Board discretionary funds.~~
- ~~C. The Superintendent shall at least annually make a request to the Board for monies from carry-over funds for the Superintendent's sole discretion but may make additional requests.~~
- ~~D. The Superintendent may make requests to the Board to expend funds, consistent with purposes identified in state law, from the mineral lease or land exchange accounts.~~

~~**KEY: State Board of Education, discretionary funds**  
**Date of Enactment or Last Substantive Amendment: May 8, 2014**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)**~~

**Education, Administration**  
**R277-304**  
**Teacher Preparation Programs**

**NOTICE OF PROPOSED RULE**  
 (New Rule)

DAR FILE NO.: 43624  
 FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to specify the standards which the Utah State Board of Education (Board) expects of teacher preparation institution prior to program approval in specified areas. The standards in this rule apply to the specific educational area and grade level for which the preparation program is designed.

**SUMMARY OF THE RULE OR CHANGE:** In the May 2018 Board committee meeting, the Board approved Rule R277-301, Educator Licensing. These changes go into effect beginning with the 2020-21 school year. A significant number of rules related to educator licensing will need to be reviewed and revised by the Board prior to the implementation of that rule. The original draft of Rule R277-304 was submitted to stakeholders for feedback on 11/26/2018. This rule has been written based on the original draft and the feedback submitted.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53E-6-201(3)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule will not have a fiscal impact on state government revenues or expenditures. This rule specifies the standards which the Board expects of teacher preparation institutions prior to program approval in specified areas. The changes to teacher preparation requirements will not have a fiscal impact on the state budget because teacher preparation is already something the Board has oversight of.

◆ **LOCAL GOVERNMENTS:** This new rule may have a fiscal impact on local governments' expenditures. This rule specifies the standards which the Board expects of teacher preparation institutions prior to program approval in specified areas. It is likely that such preparation and models will require financial investments from local education agencies (LEAs) if they wish to have such a program. Changes that may have a fiscal impact include the requirement for the provision of school-based clinical experiences that are progressively more complex and occur in multiple schools and classrooms. It is difficult to estimate a specific fiscal impact because it will vary depending on the structure of the existing teacher preparation program at the LEA and how much it differs from this rule.

◆ **SMALL BUSINESSES:** This new rule will not have a fiscal impact on small businesses' revenues or expenditures. This rule applies to teacher preparation programs which are overseen by the Board and will not have a fiscal impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule will not have a fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures. This rule applies to teacher preparation programs which are overseen by the Board and do not have a fiscal impact on other entities.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This proposed new rule has no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>

Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This proposed new rule has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-304. Teacher Preparation Programs.**

**R277-304-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-6-201(3)(a), which allows the Board to make rules to establish the criteria for obtaining an educator license.

(2)(a) The purpose of this rule is to specify the standards which the Board expects of teacher preparation institution prior to program approval in specified areas.

(b) The standards in this rule apply to the specific educational area and grade level for which the preparation program is designed.

**R277-304-2. Definitions.**

(1)(a) "Career and technical education" or "CTE" means organized educational programs or competencies which directly or

indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree.

(b) CTE programs provide all students a continuous education system, driven by a student's college and career readiness plan, through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment.

(2) "Clinical experience" means a structured opportunity in which a program candidate is mentored by a licensed educator and evaluated by a teacher leader, school administrator, or university preparation program faculty member, in order to develop and demonstrate competency in the skills and knowledge necessary to be an effective teacher, in a physical classroom, which may include experiences in a virtual classroom.

(3) "Council for the Accreditation of Educator Preparation" or "CAEP" means a national organization that advances equity and excellence in educator preparation through evidence-based accreditation that assures quality and supports continuous improvement to strengthen P-12 student learning.

(4)(a) "Council for Exceptional Children" or "CEC" means an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents.

(b) CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

(5) "Essential Elements" means the alternate academic achievement standards for students with significant cognitive disabilities, established by the Board in the Special Education Rules Manual, dated October 2016, incorporated by reference in Section R277-750-2.

(6)(a) "Multi-tiered system of supports" or "MTSS" means a framework for integrating assessment and intervention to maximize student achievement, reduce behavior problems, and increase long-term success.

(b) The combination of systematic implementation of increasingly intensive intervention, sometime referred to as tiers, and carefully monitoring students' progress, distinguishes MTSS from typical prevention measures.

(c) Emphasis, in MTSS, is placed on ensuring interventions are implemented effectively.

(7) "Utah Core Standards" means the course standards established by the Board in Rule R277-700 for grades K-12.

**R277-304-3. General Teacher Preparation.**

Prior to approval by the Board, a teacher preparation program shall:

(1) prepare candidates to meet the Utah Effective Teaching Standards in Rule R277-530;

(2) prepare candidates to teach:

(a) the Utah Core Standards; and

(b) the Essential Elements, as appropriate to a candidate's prospective area of licensure as established by the Board;

(3) include school-based clinical experiences for a candidate to observe, practice skills, and reflect on teaching that:

\_\_\_\_\_ (a) are significant in number, depth, breadth, and duration;

\_\_\_\_\_ (b) are progressively more complex;

\_\_\_\_\_ (c) occur in multiple schools and classrooms;

\_\_\_\_\_ (d) include working with all types of students; and

\_\_\_\_\_ (e) include creating and consistently implementing beginning of semester or school year classroom procedures and practices;

\_\_\_\_\_ (4) require the demonstration of competency in:

\_\_\_\_\_ (a) content and content-specific pedagogy appropriate for the area of licensure;

\_\_\_\_\_ (b) knowledge of the Utah Educator Professional Standards contained in Rule R277-515;

\_\_\_\_\_ (c) creating effective learning environments by establishing and implementing routines and procedures with consistent expectations;

\_\_\_\_\_ (d) skills in providing tier one and tier two instruction and intervention on the Utah Core Standards and positive behavior supports to each student within a multi-tiered system of supports;

\_\_\_\_\_ (e) integrating technology to support and meaningfully supplement the learning of students, including the effective use of software for personalized learning;

\_\_\_\_\_ (f) designing, administering, and reviewing educational assessments in a meaningful and ethical manner;

\_\_\_\_\_ (g) analyzing formative and summative assessments results to inform and modify instruction;

\_\_\_\_\_ (h) assessing students for competency for the purpose of personalized learning;

\_\_\_\_\_ (i) skills in implementing personalized learning practices that consider the whole child including:

\_\_\_\_\_ (i) trauma-informed instructional practices; and

\_\_\_\_\_ (ii) restorative instructional practices;

\_\_\_\_\_ (j) knowledge and skills designed to assist in the identification of students with disabilities to meet the needs of students with disabilities in the general classroom, including:

\_\_\_\_\_ (i) knowledge of the IDEA and Section 504 of the Rehabilitation Act;

\_\_\_\_\_ (ii) knowledge of the role of non-special-education teachers in the education of students with disabilities;

\_\_\_\_\_ (iii) knowledge and skills in implementing least restrictive behavior interventions;

\_\_\_\_\_ (iv) skills in implementing and assessing the results of interventions; and

\_\_\_\_\_ (v) skills in the implementation of an educational program with accommodations, modifications, services, and supports established by an IEP or a 504 plan for students with disabilities in the general education classroom;

\_\_\_\_\_ (k) knowledge and skills designed to meet the needs of diverse student populations in the general education classroom, including:

\_\_\_\_\_ (i) allowing students multiple ways to demonstrate learning that are sensitive to student diversity;

\_\_\_\_\_ (ii) creating an environment using a teaching model that is sensitive to multiple experiences and diversity;

\_\_\_\_\_ (iii) designing, adapting, and delivering instruction to address each student's diverse learning strengths and needs; and

\_\_\_\_\_ (iv) incorporating tools of language development into planning, instruction, and intervention for students learning English and supporting development of English proficiency; and

\_\_\_\_\_ (l) knowledge and skills in collaborating with parents and guardians.

\_\_\_\_\_ (5) for a program applicant accepted on or after January 1, 2020, require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in one or more clinical experiences in each of the following competencies:

\_\_\_\_\_ (a) implementing the planning and design, delivery, facilitation, assessment, evaluation, and reflection of a unit of instruction, including:

\_\_\_\_\_ (i) systematic and explicit instructional design and implementation;

\_\_\_\_\_ (ii) varied evidence-based instructional strategies;

\_\_\_\_\_ (iii) developmentally appropriate and authentic learning experiences;

\_\_\_\_\_ (iv) scaffolded instruction;

\_\_\_\_\_ (v) differentiated instruction;

\_\_\_\_\_ (vi) instruction targeting higher order thinking and metacognitive skills;

\_\_\_\_\_ (vii) project-based or competency-based learning opportunities;

\_\_\_\_\_ (viii) designing and selecting pre-assessments, formative, and summative assessments that align to student learning objectives; and

\_\_\_\_\_ (ix) revising instructional plans for future implementation or reteaching concepts as appropriate;

\_\_\_\_\_ (b) integrating cross-disciplinary skills, such as literacy or numeracy, into instruction;

\_\_\_\_\_ (c) engaging students in the learning process;

\_\_\_\_\_ (d) utilizing technology to enhance and personalize instruction;

\_\_\_\_\_ (e) implementing the accommodations, modifications, services, and supports as outlined in a student's IEP or 504 plan;

\_\_\_\_\_ (f) evaluating student artifacts and assessments for the purposes of:

\_\_\_\_\_ (i) measuring student understanding;

\_\_\_\_\_ (ii) modifying instruction;

\_\_\_\_\_ (iii) targeting tier two instruction and intervention in a multi-tiered system of support;

\_\_\_\_\_ (iv) providing feedback to students; and

\_\_\_\_\_ (v) documenting student progress, i.e., assigning an academic grade;

\_\_\_\_\_ (g) establishing and maintaining classroom procedures and routines that include positive behavior interventions and supports;

\_\_\_\_\_ (h) establishing and maintaining a positive learning climate;

\_\_\_\_\_ (i) reflecting on the teaching process and justifying instructional decisions;

\_\_\_\_\_ (j) collaborating with grade level, subject, or cross-curricular teams to:

\_\_\_\_\_ (i) analyze student data; and

\_\_\_\_\_ (ii) inform, plan, and modify instruction;

\_\_\_\_\_ (k) participating in at least one IEP meeting or parental consultation regarding a student that the program applicant has instructed;

\_\_\_\_\_ (l) effectively communicating with parents, colleagues, and administration; and

\_\_\_\_\_ (m) consulting with a school counselor regarding the emotional well-being of students and referring the students to a school counselor when necessary;

\_\_\_\_\_ (6) include consideration of a candidate's dispositions and suitability for teaching; and

\_\_\_\_\_ (7) include plans for candidate remediation and exit counseling if applicable.

**R277-304-4. Early Childhood and Elementary Preparation Programs.**

\_\_\_\_\_ (1) Prior to approval by the Board, a preparation program for early childhood education or elementary education shall:

\_\_\_\_\_ (a) align, as appropriate, with:

\_\_\_\_\_ (i) the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs; or

\_\_\_\_\_ (ii) the CAEP 2018 K-6 Elementary Teacher Preparation Standards; and

\_\_\_\_\_ (b) require the demonstration of competency in:

\_\_\_\_\_ (i) the areas outlined in Section R277-304-3;

\_\_\_\_\_ (ii) the appropriate content knowledge needed to teach:

\_\_\_\_\_ (A) literacy, including listening, speaking, writing, and reading;

\_\_\_\_\_ (B) mathematics;

\_\_\_\_\_ (C) physical and life science;

\_\_\_\_\_ (D) health and physical education;

\_\_\_\_\_ (E) social studies; and

\_\_\_\_\_ (F) fine arts;

\_\_\_\_\_ (iii) the science of reading instruction including:

\_\_\_\_\_ (A) phonemic awareness;

\_\_\_\_\_ (B) phonics;

\_\_\_\_\_ (C) fluency;

\_\_\_\_\_ (D) vocabulary; and

\_\_\_\_\_ (E) comprehension;

\_\_\_\_\_ (iv) the science of mathematics instruction, including:

\_\_\_\_\_ (A) quantitative reasoning;

\_\_\_\_\_ (B) problem solving;

\_\_\_\_\_ (C) representation;

\_\_\_\_\_ (D) numeracy; and

\_\_\_\_\_ (E) a balance of procedural and conceptual understanding; and

\_\_\_\_\_ (v) early childhood development and learning.

\_\_\_\_\_ (2) For a program applicant accepted after January 1, 2020, a preparation program for early childhood or elementary education shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

\_\_\_\_\_ (a) all requirements outlined in Subsection R277-304-3(6);

\_\_\_\_\_ (b) demonstrating content specific pedagogy in each of the areas outlined in Subsection R277-304-4(1)(b)(ii);

\_\_\_\_\_ (c) diagnosing students struggling with reading and planning and implementing remediation for those students; and

\_\_\_\_\_ (d) diagnosing students struggling with mathematics and planning and implementing remediation for those students.

\_\_\_\_\_ (3) An educator preparation program shall apply the standards in this Section R277-304-4 to the specific age group or grade level for which the program of preparation is designed.

\_\_\_\_\_ (a) An early childhood education program shall focus primarily on early childhood development and learning in kindergarten through grade 3.

\_\_\_\_\_ (b) An elementary program shall include both early childhood development and learning and elementary content and pedagogy in kindergarten through grade 6.

**R277-304-5. Secondary Preparation Programs.**

\_\_\_\_\_ (1) Prior to approval by the Board, a secondary preparation program shall require competency in:

\_\_\_\_\_ (a) all content competencies established by the Superintendent for a professional educator license in at least one endorsement;

\_\_\_\_\_ (b) all areas outlined in Section R277-304-3;

\_\_\_\_\_ (c) including literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards; and

\_\_\_\_\_ (d) planning instruction and assessment in content-specific teams and in cross-curricular teams.

\_\_\_\_\_ (2) For a program applicant accepted after January 1, 2020, a secondary preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

\_\_\_\_\_ (a) all requirements outlined in Subsection R277-304-3(6);

\_\_\_\_\_ (b) ensuring student safety and learning in educational labs or shops and extra-curricular settings; and

\_\_\_\_\_ (c) collaborating with a school counselor, as necessary, to ensure student progress on the student's four-year plan for college and career readiness as described in Rule R277-462.

**R277-304-6. Special Education and Preschool Special Education Programs.**

\_\_\_\_\_ (1) Prior to approval by the Board, a special education or preschool special education preparation program shall:

\_\_\_\_\_ (a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

\_\_\_\_\_ (b) aligned with the 2012 Council for Exceptional Children Initial Preparation Standards as informed by the Council for Exceptional Children Specialty Sets for Initial Preparation Programs in one or more of the following special education areas:

\_\_\_\_\_ (i) Mild/Moderate Disabilities;

\_\_\_\_\_ (ii) Severe Disabilities;

\_\_\_\_\_ (iii) Deaf and Hard of Hearing;

\_\_\_\_\_ (iv) Blind and Visually Impaired;

\_\_\_\_\_ (v) Deafblind; or

\_\_\_\_\_ (vi) Preschool Special Education (Birth-Age 5);

\_\_\_\_\_ (c) require the passage of a special education content knowledge assessment approved by the Superintendent;

\_\_\_\_\_ (d) require the passage of a Braille assessment approved by the Superintendent for a program in the Blind and Visually Impaired area;

\_\_\_\_\_ (e) require the demonstration of competency in:

\_\_\_\_\_ (i) all areas detailed in Section R277-304-3;

\_\_\_\_\_ (ii) legal and ethical issues surrounding special education, including:

\_\_\_\_\_ (A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) the IDEA and Board Special Education rules;

(iv) working with other school personnel to implement and evaluate academic and positive behavior supports and interventions for students with disabilities within a multi-tiered system of supports;

(v) training in and supervising the services and supports provided to students with disabilities by general education teachers, related service providers, and paraprofessionals; and

(vi) providing specially designed instruction, including content specific pedagogy, as per IEPs, to students with disabilities, including:

(A) the Utah Core Standards; and

(B) the Essential Elements as appropriate to a candidate's prospective area of licensure as established by the Board;

(C) skills in assessing and addressing the educational needs and progress of students with disabilities;

(D) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities; and

(E) skills in implementing an educational program with accommodations, modifications, services, and supports established by an IEP for students with disabilities.

(2) For a program applicant accepted after January 1, 2020, a special education or preschool special education preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsection R277-304-3(6);

(b) creating learning goals and objectives for a student with disabilities that are specific, measurable, time-bound, and aligned to identified student needs and the Utah Core Standards;

(c) designing or adapting learning environments for diverse student populations that encourage active participation in individual and group activities;

(d) monitoring school compliance with the provisions of multiple student's IEP and Section 504 plans;

(e) conducting a student IEP meeting under the supervision of a licensed special education teacher;

(f) using knowledge of measurement principles and practices to interpret assessment information in making instructional, eligibility, program, and placement decisions for students with disabilities, including those from culturally or linguistically diverse backgrounds;

(g) developing and implementing a secondary transition plan as it relates to post-secondary education and training, competitive employment and independent living; and

(h) communicating with parents of students with disabilities to ensure they are informed regarding the progress of their student and their right to due process.

#### **R277-304-7. Deaf Education Preparation Programs.**

(1) Prior to approval by the Board, a deaf education preparation program shall:

(a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

(b) be aligned with the National Association of State Directors of Special Education, Inc., Optimizing Outcomes for Students who are Deaf or Hard of Hearing, Educational Service Guidelines, Third Edition;

(c) be focused on one or more of the following areas:

(i) teaching students who are deaf or hard of hearing from birth to age five using both listening and spoken language strategies and American Sign Language;

(ii) teaching students who are deaf or hard of hearing with listening and spoken language strategies; or

(iii) teaching students who are deaf or hard of hearing with strategies that promote the development of American Sign Language and English literacy across the curriculum;

(d) require the passage of a deaf education content knowledge assessment approved by the Superintendent;

(e) require demonstration of competency in:

(i) the areas detailed in Section R277-304-3.

(ii) legal and ethical issues surrounding special education, including:

(A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) addressing specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;

(iv) skills for incorporating language into all aspects of the curriculum;

(v) pedagogical skills unique to teaching reading, writing, mathematics, and other content areas to deaf and hard of hearing students;

(vi) basic fluency in the use of American Sign Language;

(vii) knowledge of the audiological and physiological components of audition;

(viii) skills for teaching speech to deaf and hard of hearing students;

(ix) the socio-cultural and psychological implications of hearing loss; and

(x) assessing and addressing the educational needs and educational progress of deaf and hard of hearing students.

(2) For a program applicant accepted after January 1, 2020, a deaf or hard of hearing education preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsection R277-304-3(6);

(b) for a program focused on Subsection R277-304-7(1)(c)(i):

(i) assessing early childhood language development and assessment in American Sign Language and spoken English;

(ii) working with families with students who are deaf or hard of hearing while respecting a variety of communication modalities;

(iii) integrating language, speech, and listening everyday activities;

(iv) sharing knowledge with families with students who are deaf or hard of hearing about the complexities of deaf culture, including norms and behaviors of the deaf community;

(v) developing auditory perception in children and educating parents about developmental milestones for listening skills; and

(vi) proficiency in American Sign Language as demonstrate by passing an assessment approved by the Superintendent;

(c) for a program focused on Subsection R277-304-7(1)(c)(ii):

(i) developing auditory perception in children and strategies for developing listening and spoken language in deaf and hard of hearing students;

(ii) demonstrating understanding and expertise regarding early childhood spoken language development;

(iii) involving family members with students who are deaf or hard of hearing in learning and therapeutic activities;

(iv) integrating speech, listening, and spoken language in preschool and early elementary content areas; and

(v) integrating current listening technology, including troubleshooting such technology; and

(d) for a program focused on Subsection R277-304-7(1)(c)(iii):

(i) integrating American Sign Language into instruction of core academic content for all school-age students;

(ii) enhancing bilingual literacy of students who are deaf or hard of hearing in both American Sign Language and English;

(iii) integrating respect and understanding of deaf culture into instruction;

(iv) demonstrating understanding and expertise regarding American Sign Language language development; and

(v) proficiency in American Sign Language as demonstrated by passing an assessment approved by the Superintendent.

**R277-304-8. Career and Technical Education Preparation Programs.**

(1) Prior to approval by the Board, a CTE teacher preparation program designed for individuals that do not hold a bachelor's degree or higher shall:

(a) focus on one or more of the following areas:

(i) family and consumer sciences;

(ii) health sciences;

(iii) information technology;

(iv) skilled and technical sciences; or

(v) work-based learning;

(b) require that candidates have six years of documented, related occupational experiences within the 10 years prior to the program application in an approved CTE license area;

(c) require demonstration of competency in all areas detailed in Sections R277-304-3 and R277-304-5;

(d) For a program applicant accepted after January 1, 2020, a CTE preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in all requirements outlined in Section R277-304-5; and

(e) require candidates to hold the applicable license or certificate issued by the Utah State Department of Commerce, Division of Occupational and Professional Licensing in any area where such licensure or certification exists.

(2) A program may count an associate's degree in a related area for up to two years of occupational experience to satisfy the requirement in Subsection R277-304-8(1)(b).

(3)(a) An approved program may request a waiver from the Superintendent of the occupational experience required for a candidate if the candidate has passed an approved competency examination in the respective field at or above the passing score established by the Superintendent.

(b) The Superintendent may grant a waiver under Subsection (2)(a) for up to five years from the date the candidate passed the examination.

**KEY: teacher preparation, programs, educators**

**Date of Enactment of Last Substantive Amendment: 2019**

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

**Education, Administration**  
**R277-552**  
**Charter School Timelines and Approval Processes**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 43623

FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 11/01/2018 the Utah State Board of Education (Board) meeting, Rule R277-552 was adopted by the Board. However, in March 2019 further amendments were proposed.

**SUMMARY OF THE RULE OR CHANGE:** The language was amended in Subsections R277-552-3(3) and (7), plus in R277-552-7(8). Language was deleted in Subsections R277-552-5(6) and R277-552-6(6).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Section 53F-2-702 and Section 53G-5-304 and Section 53G-5-305 and Section 53G-5-306 and Subsection 53E-3-401(4) and Subsection 53G-5-205(5) and Subsection 53G-6-504(5)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes will not have a fiscal impact on state government revenues or expenditures. These change require the specified documentation from local

education agencies (LEAs) be submitted to the State Superintendent prior to receiving charter school start-up funds. However, the required documentation itself is not a new requirement. This rule also requires that prior to accepting a charter school from another authorizer, a new charter authorizer shall request and consider information from the Board and current authorizer of the charter school's financial and academic performance. These changes are to comply with H.B. 313, Public School Revisions, from the 2018 General Session. These rule changes will not have a fiscal impact on the state budget because the funding for the Board to comply with the changes in statute was appropriated in the 2018 General Session.

◆ LOCAL GOVERNMENTS: These rule changes will not have a fiscal impact on local governments' revenues or expenditures. These changes require the specified documentation from LEAs be submitted to the State Superintendent prior to receiving charter school start-up funds. However, the required documentation for LEAs is not a new requirement. This rule also requires that prior to accepting a charter school from another authorizer, a new charter authorizer shall request and consider information from the Board and current authorizer of the charter school's financial and academic performance. These changes will not have a fiscal impact on local governments because this requirement to collect performance data is already in place for charter authorizers.

◆ SMALL BUSINESSES: These rule changes will not have a fiscal impact on small businesses' revenues or expenditures. This rule applies to charter schools and the State Board and thus does not affect small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These rule changes will not have a fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures. This rule applies to charter schools and the Board and thus does not affect small businesses.

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: There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>



\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-552. Charter School Timelines and Approval Processes.**

**R277-552-1. Authority and Purpose.**

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;
- (c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;
- (d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;
- (e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;
- (f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds; and
- (g) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that a charter school authorizer is required to apply.

(2) The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

**R277-552-2. Charter School Authorization Process.**

(1) An individual or non-profit organization as described in Subsection 53G-5-302(2)(b) may apply to open a charter school from any statutorily approved authorizer.

(2) An authorizer shall submit a process to the Board for approval of:

- (a) a new charter school;
- (b) a charter school expansion;
- (c) a replication school; or
- (d) a satellite school.

(3) A new authorizer shall submit a new charter school application process to the Board for approval at least six months prior to accepting applications for a new charter school.

(4)(a) The Board shall approve or deny an authorizer's application process within 65 days of receipt of the proposed process from an authorizer.

(b) If the Board denies an application process, the Superintendent shall provide a written explanation of the reasons for the denial to the applicant within 45 days.

(c) If an authorizer's application process is denied, the authorizer may submit a revised application process for approval at any time.

(5) An existing authorizer may not authorize a new charter school for the 2021-22 school year and beyond until the Board approves the authorizer's application process.

(6) An authorizer shall have an application and charter agreement, which shall include all elements required by Title 53G, Chapter 5, Part 3, Charter School Authorization.

(7) An authorizer shall maintain the official charter agreement, which shall presumptively be the final, and complete agreement between a school and the school's authorizer.

(8) An authorizer's review process for a new charter school shall include:

- (a) a plan for pre-operational and other trainings;
- (b) an evaluation of the school's governing board,

including:

- (i) a review of the resumes of and background information of proposed governing board members; and
- (ii) a capacity interview of the proposed governing board;
- (c) an evaluation of the school's financial viability,

including:

- (i) a market analysis;
- (ii) anticipated enrollment; and
- (iii) anticipated and break even budgets;
- (d) an evaluation of the school's academic program and academic standards by which the authorizer will hold the school accountable; and

(e) an evaluation of the school's proposed pre-operational plan, including implementation of:

- (i) required policies;
- (ii) student data systems;
- (iii) reporting; and
- (iv) financial management.

(9) An authorizer review process shall include contacting the school district in which a proposed charter school will be located and consideration of any feedback provided by the district.

(10) An authorizer shall design its approval process so that the authorizer notifies the Superintendent of an authorizer approval of a request identified in Subsection (2) no later than October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

**R277-552-3. Timelines - Charter School Starting Date and Facilities.**

(1) A charter school may receive state start-up funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(2) Prior to receiving state start-up funds an authorizer shall certify in writing to the State Charter School Board that a charter school has:

- (a) completed all financial identifying documents;
- (b) completed background checks for each governing board member; and

(c) executed a signed charter agreement, which includes academic goals.

(3) Prior to an LEA receiving state start-up funds, the State Charter School Board shall require the LEA to submit documentation supporting the information required in Subsections (2)(a) and (c) to the Superintendent.

~~(3)~~4 A charter school may receive state funds, including minimum school program funds, if the charter school authorizer certifies in writing to the Superintendent by June 30 prior to the school's first operational year that:

(a) the charter school meets the requirements of Subsection (2);

(b) the charter school's governing board has adopted all policies required by statute or board rule, including a draft special education policies and procedures manual;

(c) the charter school's governing board has adopted an annual calendar in an open meeting and has submitted the calendar to the Superintendent;

(d) the authorizer has received the charter school's facility contract as required by Subsection 53G-5-404(9);

(e) the charter school has met the requirements of Subsections (5) and (6) and that the school's building is on track to be completed prior to occupancy;

(f)(i) the charter school has hired an executive director and a business administrator; or

(ii)(A) the charter school governing board has designated an executive director or business administrator employed by a third party; and

(B) the charter school governing board has established policies regarding the charter school's supervision of the charter school's third-party contractors;

(g) the charter school's enrollment is on track to be sufficient to meet the school's financial obligations and implement the charter school agreement;

(h) the charter school has an approved student data system that has successfully communicated with UTREx, including meeting the compatibility requirements of Subsection R277-484-5(3); and

(i) the charter school has a functional accounting system.

~~(4)~~5 An authorizer shall:

(a) create a process to verify the requirements in Subsection ~~(3)~~4;

(b) maintain documentation of Subsection ~~(4)~~5(a); and

(c) provide the documentation described in Subsection ~~(4)~~5(b) to the Superintendent upon request.

~~(5)~~6 A charter school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

~~(6)~~7 A charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277- 471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

~~(7)~~8 If a charter school fails to meet the requirements of this section within 36 months of approval, the approval of the charter school shall expire.

#### **R277-552-4. Charter Amendment Requests.**

(1) An authorizer shall have a policy establishing a process for consideration of proposed amendments to a school's charter agreement.

(2) An authorizer's timeline for consideration of an amendment to a charter agreement may not conflict with any funding deadline established in Board rule.

#### **R277-552-5. Charter School Expansion Requests.**

(1) A charter school may request approval for an expansion if:

(a) the charter school satisfies the requirements of federal and state law, regulations, rule, and the charter agreement; and

(b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or

(ii) the charter school governing board has submitted a formal amendment request to the charter school authorizer consistent with the charter school authorizer's requirements.

(2) If the charter school authorizer approves a charter school expansion, the expansion shall be approved before October 1 of the state fiscal year prior to the school's intended expansion date.

(3) A charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion date.

(4) When considering whether to approve a charter school's request for an expansion, an authorizer shall consider the following:

(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement;

(b) two years of academic performance data of students at the charter school, including whether the charter school is performing at or above:

(i) the academic goals established in the charter school's charter agreement; and

(ii) the average academic performance of other district and charter schools in the area, or for schools targeting specific populations, schools with similar demographics;

(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:

(i) most recent annual financial report (AFR);

(ii) annual program report (APR); and

(iii) audited financial statement;

(d) whether the charter school has a waiting list for enrollment;

(e) adequacy of the charter school's facility;

(f) any student safety issues; and

(g) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines.

~~(6)~~5 A charter school requesting an expansion shall provide the information described in Subsection ~~(5)~~4 to the authorizer with the charter school's request for expansion.

**R277-552-6. Requests for a New Replication or Satellite School for an Approved Charter School.**

(1) A charter school and all of the charter school's replication or satellite schools are a single LEA for purposes of public school funding and reporting.

(2) An existing charter school may submit a request to the charter school's authorizer for a replication or satellite charter school if:

(a) the charter school satisfies requirements of federal and state law, regulations, and rule;

(b) the charter school has operated successfully for at least three years meeting the terms of its charter agreement;

(c) the students at the charter school are performing on standardized assessments at or above the academic goals in the charter agreement, or, if there are no such goals in the charter agreement, are performing at or above surrounding schools;

(d) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the replication or satellite charter school;

(e) the charter school provides any additional information or documentation requested by the charter school authorizer; and

(f) the charter school is in good standing with its authorizer.

(3) As part of the application process, the authorizer shall review the charter school's:

(a) educational services, assessment, and curriculum;

(b) governing board's capacity to manage multiple campuses; and

(c) the school's financial viability.

(4) A replication or satellite charter school that will receive School LAND Trust funds shall have a charter trust land council and satisfy all requirements for charter trust land councils consistent with Rule R277-477.

(5) A replication or satellite charter school may receive state funding if the authorizer approves the replication or satellite charter school by October 1 of the state fiscal year prior to the year the school intends to serve students.

(6) If a replication or satellite charter school does not open within 36 months of approval, the approval shall expire.

(7) A charter school authorizer that authorizes a replication or satellite charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion date.

**R277-552-7. Procedures and Timelines to Change Charter School Authorizers.**

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the following:

(i) most recent annual financial report (AFR);

(ii) annual project report (APR); and

(iii) audited financial statement;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all charter school governing board policies;

(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits, ~~or judgments~~, or ~~liens~~~~[identifying outstanding lawsuits filed or judgments]~~ against the charter school.

(4) The current authorizer of a charter school seeking to transfer charter school authorizers shall submit a position statement to the new charter school authorizer about:

(a) the charter school's status;

(b) compliance with the charter school authorizer requirements; and

(c) unresolved concerns.

(5) A new charter school authorizer shall review an application for transferring a charter school authorizer for acceptance within 60 days of submission of a complete application, including all required documentation.

(6) If an authorizer accepts the transfer of a new charter school, the new authorizer shall notify the Superintendent within 30 days.

(7) Prior to accepting a charter school from another authorizer, a new charter authorizer shall request and consider information from the Board and current authorizer of the charter school's financial and academic performance.

(8) The Superintendent and current authorizer shall provide the information described in Subsection (7) to a new charter authorizer within 30 days of request described in Subsection (7).

**KEY: training, timelines, expansion, satellite**

**Date of Enactment or Last Substantive Amendment: ~~January 9,~~ 2019**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205; 53F-2-702; 53G-6-503**

Education, Administration  
**R277-700**

The Elementary and Secondary School  
General Core

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 43621

FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah State Board of Education (Board) is proposing new language to outline the procedures that a local education agency (LEA) should follow in awarding credits to students earned through the Statewide Online Education Program prior to grades 9 through 12, which count towards early graduation efforts.

**SUMMARY OF THE RULE OR CHANGE:** The new language was added in Subsections R277-700-2(13) and R277-700-4(6) outlining procedures that LEAs should follow.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Section 53E-3-501 and Section 53E-4-202 and Section 53E-4-205 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes will not have a fiscal impact on state government revenues or expenditures. These changes outline the awarding of credits to students through the Statewide Online Education Program prior to grades 9 through 12 as long as the student has declared an intent to graduate early and the high school courses are not used to replace middle school educational requirements (in line with changes to Rule R277-726). This rule also adds in keyboarding proficiency as a core subject requirement. These changes will not impact the state budget as they will not impact state funding.

◆ **LOCAL GOVERNMENTS:** These rule changes will not have a fiscal impact on local governments' revenues or expenditures. These changes outline the awarding of credits to students through the Statewide Online Education Program prior to Grades 9 through 12 as long as the student has declared an intent to graduate early and the high school courses are not used to replace middle school educational requirements (in line with changes to Rule R277-726). This rule also adds in keyboarding proficiency as a core subject requirement. These changes will not have a fiscal impact on local governments. Keyboarding standards and assessments are already in place.

◆ **SMALL BUSINESSES:** These rule changes will not have a fiscal impact on small businesses' revenues or expenditures. This rule applies to the elementary and secondary school general core so it does not apply to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes will not have a fiscal impact on other small businesses, businesses, or local government entities revenues or expenditures. This rule applies to the elementary and secondary school general core so it does not apply to other entities.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-700. The Elementary and Secondary School General Core.**

**R277-700-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection [53A-1-401]53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Section [53A-1-402]53E-3-501, which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements;
  - (d) Section [53A-1-402.6]53E-4-202, which directs:
    - (i) the Board to establish Core Standards in consultation with LEA boards and superintendents; and
    - (ii) LEA boards to adopt local curriculum and to design programs to help students master the General Core;
  - (e) Title [53A]53E, Chapter [4]4, Part [4]2, Career and College Readiness Mathematics Competency, which directs the Board to establish college and career mathematics competency standards; and
  - (f) Section [53A-13-109.5]53E-4-205, which requires the Board to provide rules related to a basic civics test.

(2) The purpose of this rule is to specify the minimum Core Standards and General Core requirements for the public schools, and to establish responsibility for mastery of Core Standard requirements.

**R277-700-2. Definitions.**

For purposes of this rule:

- (1)(a) "Applied course" means a public school course or class that applies the concepts of a Core subject.
- (b) "Applied course" includes a course offered through Career and Technical Education or through other areas of the curriculum.
- (2) "Arts" means the visual arts, music, dance, theatre, and media arts.
- (3) "Assessment" means a summative computer adaptive assessment for:
  - (a) English language arts grades 3 through 11;
  - (b) mathematics grades 3 through 8, and Secondary I, II, and III; or
  - (c) science grades 4 through 8, earth science, biology, physics and chemistry.
- (4) "Career and Technical Education (CTE)" means an organized educational program or course which directly or indirectly prepares students for employment, or for additional preparation leading to employment, in an occupation, where entry requirements generally do not require a baccalaureate or advanced degree.
- (5) "Core Standard" means a statement of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course.
- (6) "Core subject" means a course for which there is a declared set of Core Standards as approved by the Board.
- (7) "Elementary school" for purposes of this rule means a school that serves grades K-6 in whatever kind of school the grade levels exist.
- (8) "General Core" means the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, including the ideas, knowledge, practice and skills that support the Core Standards.
- (9) "High school" for purposes of this rule means a school that serves grades 9-12 in whatever kind of school the grade levels exist.
- (10) "LEA" or "local education agency" includes the Utah Schools for the Deaf and the Blind.
- ~~(11) "Life Skills document" means a companion document to the Core Standards that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.~~
- (12) "Middle school" for purposes of this rule means a school that serves grades 7-8 in whatever kind of school the grade levels exist.
- (13) "Junior High school" means a school that serves grades 7-9 in whatever kind of school the grade levels exist.
- (14) "Proficiency in keyboarding" means a student's ability to key by touch.
- (15) "Summative adaptive assessment" means an assessment that:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the Core Standards for the respective grade and course; and

(d) measures the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

**R277-700-3. General Core and Core Standards.**

(1) The Board establishes minimum course description standards for each course in the required General Core.

(2)(a) The Superintendent shall develop, in cooperation with LEAs, course descriptions for required and elective courses.

(b) The Superintendent shall provide parents and the general public an opportunity to participate in the development process of the course descriptions described in Subsection (2)(a).

(3)(a) The Superintendent shall ensure that the courses described in Subsection (2):

(i) contain mastery criteria for the courses; and

(ii) stress mastery of the course material, Core Standards, and life skills consistent with the General Core [~~and Life Skills document~~].

(b) The Superintendent shall place a greater emphasis on a student's mastery of course material rather than completion of predetermined time allotments for courses.

(4) An LEA board shall administer the General Core and comply with student assessment procedures consistent with state law.

**R277-700-4. Elementary Education Requirements.**

(1) The Core Standards and a General Core for elementary school students in grades K-6 are described in this section.

(2) The following are the Elementary School Education Core Subject Requirements:

(a) English Language Arts;

(b) Mathematics;

(c) Science;

(d) Social Studies;

(e) Arts:

(i) Visual Arts;

(ii) Music;

(iii) Dance; or

(iv) Theatre;

(f) Health Education;

(g) Physical Education;

(h) Educational Technology, including keyboarding; and

(i) Library Media.

(3) An LEA board shall provide access to the General Core to all students within the LEA.

(4) An LEA board is responsible for student mastery of the Core Standards.

(5) An LEA shall conduct informal assessments on a regular basis to ensure continual student progress.

(6) An LEA shall assess students for proficiency in keyboarding by grade 5 and report school level results to the Superintendent.

[[6]7] An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

(a) reading;

(b) language arts;

(c) mathematics;

(d) science; and

(e) effectiveness of written expression in grades five and eight.

[[7]8] An LEA shall provide remediation to elementary students who do not achieve mastery of the subjects described in this section.

**R277-700-5. Middle School Education Requirements.**

(1) The Core Standards and a General Core for middle school students are described in this section.

(2) A student in grades 7-8 is required to complete the courses described in Subsection (3) to be properly prepared for instruction in grades 9-12.

(3) The following are the Grades 7-8 General Core Requirements:

(a) Grade 7 Language Arts;

(b) Grade 8 Language Arts;

(c) Grade 7 Mathematics;

(d) Grade 8 Mathematics;

(e) Grade 7 Integrated Science;

(f) Grade 8 Integrated Science;

(g) United States History;

(h) Utah History; and

(i) at least one course in each of the following in grades 7 or 8:

(A) Health Education;

(B) College and Career Awareness;

(C) Digital Literacy;

(D) the Arts; and

(E) Physical Education.

(4) An LEA shall use evidence-based best practices, technology, and other instructional media in middle school curricula to increase the relevance and quality of instruction.

(5) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following:

(a) reading;

(b) language arts;

(c) mathematics; and

(d) science.

(6) At the discretion of the LEA board, an LEA board may:

(a) offer additional elective courses;

(b) require a student to complete additional courses; or

(c) set minimum credit requirements.

(7) Upon parental or student request, an LEA may, with parental consent, substitute a course requirement described in Subsection (3) with a course, extracurricular activity, or experience that is:

(a) similar to the course requirement; or

(b) consistent with the student's plan for college and career readiness.

(8)(a) An LEA shall establish a policy governing the substitution of a course requirement as described in Subsection (7).

(b) An LEA's policy described in Subsection (8)(a) shall include a process for a parent to appeal an LEA's denial of a request for a substitution described in Subsection (7) to the LEA board or the LEA board designee.

#### **R277-700-6. High School Requirements.**

(1) The General Core and Core Standards for students in grades 9-12 are described in this section.

(2) A student in grades 9-12 is required to earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.

(3) Through recording of credits in a student's transcripts for grades 9-12, in accordance with Subsections R277-726-5(9) and R277-726-5(10), for purposes of high school graduation, an LEA shall recognize high school credits earned prior to grade 9 through participation in the Statewide Online Education Program, provided that:

(a) the student has declared an intention to graduate early; and

(b) the high school courses are not used to replace middle school educational requirements.

(~~3~~4) The General Core credit requirements from courses approved by the Board are described in Subsections (4) through (18).

(~~4~~5) Language Arts (4.0 units of credit from the following):

(a) Grade 9 level (1.0 unit of credit);

(b) Grade 10 level (1.0 unit of credit);

(c) Grade 11 level (1.0 unit of credit); and

(d) Grade 12 level (1.0 Unit of credit) consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's Plan for College and Career Readiness:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts;

(iii) courses apply the fundamental concepts and skills of language arts;

(iv) courses provide developmentally appropriate content; and

(v) courses develop skills in reading, writing, listening, speaking, and presentation.

(~~5~~6) Mathematics (3.0 units of credit) shall be met minimally through successful completion of a combination of the foundation or foundation honors courses, Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

(~~6~~7)(a) A student may opt out of Secondary Mathematics III if the student's parent submits a written request to the school.

(b) If a student's parent requests an opt out described in Subsection (6)(a), the student is required to complete a third math credit from the Board-approved mathematics list.

(~~7~~8) A 7th or 8th grade student may earn credit for a mathematics foundation course before 9th grade, consistent with the student's Plan for College and Career Readiness if:

(a) the student is identified as gifted in mathematics on at least two different Board-approved assessments;

(b) the student is ~~that~~ enrolled at ~~the~~ a middle school ~~or~~ junior high school and ~~the~~ a high school;

(c) the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade; or

(d) the student takes the Board competency test in the summer prior to 9th grade and earns high school graduation credit for the course.

(~~8~~9) A student who successfully completes a mathematics foundation course before 9th grade is required to earn 3.0 units of additional mathematics credit by:

(a) taking the other mathematics foundation courses described in Subsection (5); and

(b) an additional course from the Board-approved mathematics list consistent with:

(i) the student's Plan for College and Career Readiness; and

(ii) the following criteria:

(A) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

(B) courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

(C) courses apply the fundamental concepts and skills of mathematics;

(D) courses provide developmentally appropriate content; and

(E) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(~~9~~10) A student who successfully completes a Calculus course with a "C" grade or higher has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

(~~10~~11) Science (3.0 units of credit):

(a) shall be met minimally through successful completion of 2.0 units of credit from two of the following five science foundation areas:

(i) Earth Science (1.0 units of credit);

(A) Earth Science;

(B) Advanced Placement Environmental Science; or

(C) International Baccalaureate Environmental Systems;

(ii) Biological Science (1.0 units of credit);

(A) Biology;

(B) Human Biology;

(C) Biology: Agricultural Science ~~and~~ & Technology;

(D) Advanced Placement Biology;

(E) International Baccalaureate Biology; or

(F) Biology with Lab Concurrent Enrollment;

(iii) Chemistry (1.0 units of credit);

(A) Chemistry;

(B) Advanced Placement Chemistry;

(C) International Baccalaureate Chemistry; or

(D) Chemistry with Lab Concurrent Enrollment;

(iv) Physics (1.0 units of credit);

(A) Physics;  
 (B) Physics with Technology;  
 (C) Advanced Placement Physics (1, 2, C: Electricity and Magnetism, or C: Mechanics);  
 (D) International Baccalaureate Physics; or  
 (E) Physics with Lab Concurrent Enrollment; or  
 (v) Computer Science (1.0 units of credit):  
 (A) Advanced Placement Computer Science;  
 (B) Computer Science Principles; or  
 (C) Computer Programming II; and  
 (b) one additional unit of credit from:  
 (i) the foundation courses described in Subsection(10)(a);  
 or  
 (ii) the applied or advanced science list:  
 (A) determined by the LEA board; and  
 (B) approved by the Board using the following criteria and consistent with the student's Plan for College and Career Readiness:  
 (i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills;  
 (ii) courses provide instruction that leads to student understanding of the nature and disposition of science;  
 (iii) courses apply the fundamental concepts and skills of science;  
 (iv) courses provide developmentally appropriate content;  
 (v) courses include the areas of physical, natural, or applied sciences; and  
 (vi) courses develop students' skills in scientific inquiry.  
 ([4]12) Social Studies (3.0 units of credit) shall be met minimally through successful completion of:  
 (a) 2.5 units of credit from the following courses:  
 (i) Geography for Life (0.5 units of credit);  
 (ii) World Civilizations (0.5 units of credit);  
 (iii) U.S. History (1.0 units of credit); and  
 (iv) U.S. Government and Citizenship (0.5 units of credit);  
 (b) Social Studies (0.5 units of credit per LEA discretion); and  
 (c) a basic civics test or alternate assessment described in R277-700-8.  
 ([12]13) The Arts (1.5 units of credit from any of the following performance areas):  
 (a) Visual Arts;  
 (b) Music;  
 (c) Dance; or  
 (d) Theatre.  
 ([13]14) Physical and Health Education (2.0 units of credit from any of the following):  
 (a) Health (0.5 units of credit);  
 (b) Participation Skills (0.5 units of credit);  
 (c) Fitness for Life (0.5 units of credit);  
 (d) Individualized Lifetime Activities (0.5 units of credit); or  
 (e) team sport/athletic participation (maximum of 1.0 units of credit with school approval).  
 ([14]15) Career and Technical Education (1.0 units of credit from any of the following):

(a) Agriculture;  
 (b) Business;  
 (c) Family and Consumer Sciences;  
 (d) Health Science and Technology;  
 (e) Information Technology;  
 (f) Marketing;  
 (g) Technology and Engineering Education; or  
 (h) Trade and Technical Education.  
 ([15]16) Digital Studies (0.5 units of credit).  
 ([16]17) Library Media Skills (integrated into the subject areas).  
 ([17]18) General Financial Literacy (0.5 units of credit).  
 ([18]19) Electives (5.5 units of credit).  
 ([19]20) An LEA shall use Board-approved summative adaptive assessments to assess student mastery of the following subjects:  
 (a) reading;  
 (b) language arts through grade 11;  
 (c) mathematics as defined in Subsection (5); and  
 (d) science as defined in Subsection (10).  
 ([20]21) An LEA board may require a student to earn credits for graduation that exceed the minimum Board requirements described in this rule.  
 ([21]22) An LEA board may establish and offer additional elective course offerings at the discretion of the LEA board.  
 ([22]23)(a) An LEA may modify a student's graduation requirements to meet the unique educational needs of a student if:  
 (i) the student has a disability; and  
 (ii) the modifications to the student's graduation requirements are made through the student's individual IEP.  
 (b) An LEA shall document the nature and extent of a modification, substitution, or exemption made to a student's graduation requirements described in Subsection (22)(a) in the student's IEP.  
 ([23]24) ~~[The Board and Superintendent may review an LEA board's list of approved courses for compliance with this rule.]The Superintendent shall provide a list of approved courses meeting the requirements of this rule.~~  
 ([24]25) An LEA may modify graduation requirements for an individual student to achieve an appropriate route to student success if the modification:  
 (a) is consistent with:  
 (i) the student's IEP; or  
 (ii) SEOP/Plan for College and Career Readiness;  
 (b) is maintained in the student's file;  
 (c) includes the parent's signature; and  
 (d) maintains the integrity and rigor expected for high school graduation, as determined by the Board.

**R277-700-7. Student Mastery and Assessment of Core Standards.**

(1) An LEA shall ensure students master the Core Standards at all levels.  
 (2) An LEA shall provide remediation for secondary students who do not achieve mastery in accordance with Section [53A-13-104]53G-9-803.



(3) An LEA shall provide remedial assistance to students who are found to be deficient in basic skills through a statewide assessment in accordance with Subsection [~~53A-1-606(1)~~]53E-5-206(1).

(4) If a parent objects to a portion of a course or to a course in its entirety under Section [~~53A-13-101.2~~]53G-10-205 and R277-105, the parent shall be responsible for the student's mastery of Core Standards to the satisfaction of the school prior to the student's promotion to the next course or grade level.

(5)(a) A student with a disability served by a special education program is required to demonstrate mastery of the Core Standards.

(b) If a student's disability precludes the student from successfully mastering the Core Standards, the student's IEP team, on a case-by-case basis, may provide the student an accommodation for, or modify the mastery demonstration to accommodate, the student's disability.

(6) A student may demonstrate competency to satisfy course requirements consistent with R277-705-3.

(7) LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-404.

**R277-700-8. Civics Education Initiative.**

(1) For purposes of this section:

(a) "Student" means:

(i) a public school student who graduates on or after January 1, 2016; or

(ii) a student enrolled in an adult education program who receives an adult education secondary diploma on or after January 1, 2016.

(b) "Basic civics test" means the same as that term is defined in Subsection [~~53A-13-109.5~~]53E-4-205(1)(b).

(2) Except as provided in Subsection (3), an LEA shall:

(a) administer a basic civics test in accordance with the requirements of Section [~~53A-13-109.5~~]53E-4-205; and

(b) require a student to pass the basic civics test as a condition of receiving:

(i) a high school diploma; or

(ii) an adult education secondary diploma.

(3) An LEA may require a student to pass an alternate assessment if:

(a)(i) the student has a disability; and

(ii) the alternate assessment is consistent with the student's IEP; or

(b) the student is within six months of intended graduation.

(4) Except as provided in Subsection (5), the alternate assessment shall be given:

(a) in the same manner as an exam given to an unnaturalized citizen; and

(b) in accordance with 8 C.F.R. Sec. 312.2.

(5) An LEA may modify the manner of the administration of an alternate assessment for a student with a disability in accordance with the student's IEP.

(6) If a student passes a basics civics test or an alternate assessment described in this section, an LEA shall report to the Superintendent that the student passed the basic civics test or alternate assessment.

(7) If a student who passes a basic civics test or an alternate assessment transfers to another LEA, the LEA may not require the student to re-take the basic civics test or alternate assessment.

**R277-700-9. College and Career Readiness Mathematics Competency.**

(1) For purposes of this section, "senior student with a special circumstance" means a student who:

(a) is pursuing a college degree after graduation; and

(b) has not met one of criteria described in Subsection (2)

(a) before the beginning of the student's senior year of high school.

(2) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a student pursuing a college degree after graduation shall:

(a) receive one of the following:

(i) a score of 3 or higher on an Advanced Placement (AP) calculus AB or BC exam;

(ii) a score of 3 or higher on an Advanced Placement (AP) statistics exam;

(iii) a score of 5 or higher on an International Baccalaureate (IB) higher level math exam;

(iv) a score of 50 or higher on a College Level Exam Program (CLEP) pre-calculus or calculus exam;

(v) a score of 26 or higher on the mathematics portion of the American College Test (ACT) exam;

(vi) a score of 640 or higher on the mathematics portion of the Scholastic Aptitude Test (SAT) exam; or

(vii) a "C" grade in a concurrent enrollment mathematics course that satisfies a state system of higher education quantitative literacy requirement; or

(b) if the student is a senior student with a special circumstance, take a full year mathematics course during the student's senior year of high school.

(3) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a non-college and degree-seeking student shall complete appropriate math competencies for the student's career goals as described in the student's Plan for College and Career Readiness.

(4) An LEA may modify a student's college or career readiness mathematics competency requirement under this section if:

(a) the student has a disability; and

(b) the modification to the student's college or career readiness mathematics competency requirement is made through the student's IEP.

(5)(a) An LEA shall report annually to the LEA's board the number of students within the LEA who:

(i) meet the criteria described in Subsection (2)(a);

(ii) take a full year of mathematics as described in Subsection (2)(b);

(iii) meet appropriate math competencies as established in the students' career goals as described in Subsection (3); and

(iv) meet the college or career readiness mathematics competency requirement established in the students' IEP as described in Subsection (4).

(b) An LEA shall provide the information described in Subsection (5)(a) to the Superintendent by October 1 of each year.

**KEY:** graduation requirements, standards  
**Date of Enactment or Last Substantive Amendment:** ~~March 14, 2018~~ 2019  
**Notice of Continuation:** August 14, 2017  
**Authorizing, and Implemented or Interpreted Law:** Art. X, Sec 3; ~~53A-1-402(1)(b); 53A-1-402.6; 53A-1-401~~ 53E-3-501(1)(b); 53E-4-202; 53E-3-401(4)

**Education, Administration**  
**R277-720**

**Reimbursement Program for Early Graduation from Competency-Based Education**

**NOTICE OF PROPOSED RULE**  
 (New Rule)  
 DAR FILE NO.: 43622  
 FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed rule is authorized by Section 53F-2-511, which allows the Utah State Board of Education (Board) to create rules regarding how to reimburse a local education agency (LEA) when a competency-based education (CBE) program triggers the early graduation of a student.

**SUMMARY OF THE RULE OR CHANGE:** The new rule includes the process and criteria for becoming a CBE designated school. It also includes a calculation and distribution method for reimbursement funds provided by the legislature.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53F-2-511(1)(c)(ii) and Subsection 53F-2-511(6)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This new rule will not have a fiscal impact on state government revenues or expenditures. This rule outlines the procedures for reimbursement to an LEAs for early graduation from CBE. This reimbursement program is state-funded so this rule provides the mechanism through which funds will be distributed and will not have an independent fiscal impact.
- ◆ **LOCAL GOVERNMENTS:** This new rule will not have a fiscal impact on local governments' revenues or expenditures. This rule outlines the procedures for reimbursement to LEAs for early graduation from CBE. This reimbursement program is state-funded so this rule provides the mechanism through

which funds will be distributed and will not have an independent fiscal impact.

- ◆ **SMALL BUSINESSES:** This new rule will not have a fiscal impact on small businesses' revenues or expenditures. This rule applies to a program for LEAs so it does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule will not have a fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures. This rule applies to a program for LEAs so it does not apply to other entities.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). This proposed rule has no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 61110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 61110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-720. Reimbursement Program for Early Graduation from Competency-Based Education.**

**R277-720-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53F-2-511(1)(c)(ii), which allows the Board to make rules to specify additional criteria for an LEA to be eligible for a competency-based education early graduation reimbursement; and

(d) Subsection 53F-2-511(6), which allows the Board to make rules for the administration of the Reimbursement Program for Early Graduation from Competency-Based Education.

**R277-720-2. Definitions.**

(1) "Advisory Committee" means the Competency-based Advisory Committee created in Section R277-712-3.

(2) "Eligible LEA" means an LEA that:

(a) has demonstrated to the Board that the LEA or, for a school district, a school within the LEA, provides and facilitates competency-based education that is based on the core principles described in Section 53F-5-502; and

(b) has an approved competency-based education program that includes:

(i) at least one outcome measure for each indicator level required by the Superintendent;

(ii) outcome measures that are disaggregated by student subgroups where possible; and

(iii) at least one outcome measure for student growth and proficiency.

(3) "Eligible student" means a student who:

(a) meets the requirements described in Subsection 53F-2-511(1)(d);

(b) has been flagged by an LEA as a competency-based education participant.

(4) "Program" means the Reimbursement Program for Early Graduation from Competency-Based Education described in Section 53F-2-511.

**R277-720-3. Competency Based Education Designation.**

(1) To receive a competency-based education designation, an eligible LEA shall:

(a) submit an application in the form prescribed by the Superintendent to the advisory committee;

(b) submit the application in Subsection (1)(a) no later than April 1<sup>st</sup> of the school year prior to the school year in which the LEA intends to seek reimbursement; and

(c) have an approved competency-based education plan pursuant to R277-712.

(2) The advisory committee shall review all applications and make recommendations to the Board based on the Board approved competency-based education core principals and measures described in R277-712.

(3) The Board shall approve or deny the recommendations made by the advisory committee.

(4) If approved, an eligible LEA's competency-based education designation shall last for the following three years, provided the school continues to operate on a competency-based model.

(5) An eligible LEA may not retroactively use an approved competency-based education designation for reimbursement of eligible students.

(6) If an eligible LEA does not have a current competency-based education designation, the eligible LEA may not use the approved competency-based education designation for reimbursement of eligible students in the school year in which the eligible LEA's application is approved.

**R277-720-4. Early Graduation Reimbursement.**

(1) An eligible LEA with a competency-based education designation may seek reimbursement for an eligible student beginning October 2021 for membership generated in the 2020-2021 school year.

(2) The reimbursement amount shall be calculated by the Superintendent in the following manner:

(a) the amount of weighted pupil unit lost due to early graduation for each eligible student shall be determined as described by Subsection 53F-2-511(5);

(b) the total amount of lost weighted pupil unit for each eligible student shall be used to establish an LEA aggregate total and a statewide aggregate total for all eligible students;

(c) if the statewide aggregate total is equal to or less than the total amount allocated for the program by the legislature, an eligible LEA shall be reimbursed the LEA aggregate total;

(d) if the statewide aggregate total exceeds the total amount allocated for the program by the legislature, an eligible LEA shall be reimbursed a prorated amount proportionate to the percentage that the LEA aggregate total is of the statewide aggregate total.

(3) An LEA shall not receive a reimbursement for an eligible student that exceeds the amount outlined in Subsection 53F-2-511(5)(a).

**KEY: competency-based education, reimbursements, early graduation**

**Date of Enactment or Last Substantive Amendment: 2019 Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-511(1)(c)(ii); 53F-2-511(6)**

## Education, Administration

### R277-726

## Statewide Online Education Program

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43620

FILED: 04/01/2019

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah State Board of Education (Board) is proposing new language to outline the procedures that a local education agency (LEA) should follow in awarding credits to students earned through the Statewide Online Education Program prior to grades 9 through 12, which count towards early graduation efforts.

**SUMMARY OF THE RULE OR CHANGE:** The language has been amended to outline the procedures that LEAs should follow when awarding credit to students. Rule R277-726 is

also amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Section 53F-4-508 and Section 53F-4-514 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes will not have a fiscal impact on state government revenues or expenditures.

These changes outline the procedures that a LEA should follow in awarding credits to students through the Statewide Online Education Program prior to grades 9 through 12, which count toward early graduation efforts. These changes will not have a fiscal impact on the state because public school students are funded through the Minimum School Program. This rule specifies that a primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that the student has in the student's records documentation of the student's intention to graduate early. Also, if a student prior to Grades 9 through 12 enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local student information system. Thus, there will not be any additional cost to the Minimum School Program from these changes.

◆ **LOCAL GOVERNMENTS:** These rule changes will not have a fiscal impact on local governments' revenues or expenditures. These changes outline the procedures that a LEA should follow in awarding credits to students through the Statewide Online Education Program prior to grades 9 through 12, which count toward early graduation efforts. This rule specifies that a primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that the student has in the student's records documentation of the student's intention to graduate early. Also, if a student prior to Grades 9 through 12 enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local student information system. Thus, since these rule changes enable LEAs to account for enrollment exceeding a full course load it will not have a fiscal impact on local governments.

◆ **SMALL BUSINESSES:** These rule changes will not have a fiscal impact on small businesses' revenues or expenditures. This rule applies to the Statewide Online Education Program so it does not apply to small businesses. The only entities that offer online courses through the program include LEAs or institutions of higher education as detailed in statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes will not have a fiscal impact on other individuals' revenues or expenditures. This rule applies to the Statewide Online Education Program so it does not apply to other entities. The only entities that offer online courses through the program include LEAs or institutions of higher education as detailed in statute.

**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:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.  
 R277-726. Statewide Online Education Program.  
 R277-726-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
  - (b) Section ~~[53A-15-1210]~~53F-4-514, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;
  - (c) Section ~~[53A-15-1213]~~53F-4-508, which requires the Board to make rules that establish a course credit acknowledgment

form and procedures for completing and submitting the form to the Board; and

(d) Subsection ~~[53A-1-401]~~53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

#### **R277-726-2. Definitions.**

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the ~~Superintendent provided~~ Statewide Online Education Program ~~form~~ application provided by the Superintendent.

(b) Except as provided in Subsection ~~[53A-15-1208]~~53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4)(a) "Eligible student" means a student enrolled in grades 6-12 in a secondary environment in a course that:

(i) is offered by a public school; and

(ii) provides the student the opportunity to earn high school graduation credit.

(b) "Eligible student" does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties as provided in Subsection 53F-4-508(3)(h) and received by the Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections ~~[53A-15-1206, 53A-15-1206.5, and 53A-15-1207]~~53F-4-505 through 53F-4-507.

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

(8) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection ~~[53A-15-1207]~~53F-4-507(2).

(10) "Online course provider" or "provider" means:

(a) a school district school;

(b) a charter school;

(c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection ~~[53A-15-1205]~~53F-4-504(3).

(11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.

(12) "Primary school of enrollment" means:

(a) a student's school of record within a primary LEA of enrollment; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title ~~[53A]~~53F, Chapter ~~[45]~~4, Part ~~[42]~~5, Statewide Online Education Program Act.

(16) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

(17) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

~~[(46)]~~18) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

~~[(47)]~~19) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

#### **R277-726-3. Course Credit Acknowledgment (CCA) Process.**

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's ~~[SEOP]~~ plan for college and career readiness;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

~~(3)(a) [A provider-initiated CCA may be sent directly to the Superintendent if the course is consistent with the student's SEOP.~~

~~—(b)—~~The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(e)b The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

#### **R277-726-4. Eligible Student and Parent Rights and Responsibilities.**

(1)[(a)] An eligible student may register for program credits consistent with Section [53A-15-1204]53F-4-503.

~~[(b)] Notwithstanding Subsection (1)(a), a student's primary LEA of enrollment or the Board may allow an eligible student to enroll in additional online courses consistent with Section 53A-15-1204 with documentation from the LEA.~~

~~(2) A student enrolled in a program course may earn no more credits in a year than the number of credits a student may earn by taking a full course load during the regular school day in the student's primary school of enrollment.~~

~~[(3)]2 An eligible student may [register for more than the maximum number of credits described in Subsection 53A-15-1204(2)]exceed a full course load during a regular school year if:~~

~~(a) the student's [SEOP]plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and~~

~~(b) the student's schedule demonstrates progress toward early graduation.~~

~~(3) In accordance with Section 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local Student Information System.~~

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section [53A-15-1206]53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15).

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the [high-]school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

#### **R277-726-5. LEA Requirements and Responsibilities.**

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA [form]application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

~~(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.~~

~~[(4)](5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.~~

~~(6) A primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that:~~

~~(a) the student has in the student's records documentation of the student's intention to graduate early; and~~

~~(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.~~

~~(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students.~~

~~(8) A primary school of enrollment shall provide participating students access to sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.~~

~~(9) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.~~

~~(10) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and credit for students participating prior to grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection R277-726-5(8) once a student completes grade 8.~~

#### **R277-726-6. Superintendent Requirements and Responsibilities.**

(1) The Superintendent shall [develop and-]provide a website for the program, [that provides]including information

required under Section ~~[53A-15-1212]~~53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 and Section 53F-4-514 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsection~~[s 53A-15-1006(2) and 53A-15-1208(3)(d)]~~ 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter~~[and differing accreditation standards]~~.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections ~~[53A-15-1206, 53A-15-1206.5, and 53A-15-1207]~~ 53F-4-505 through 53F-4-507.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to ~~[the]~~ Title 63G, Chapter 2, Government Records Access and Management Act~~[-(GRAMA)]~~.

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection ~~[53A-15-1206]~~ 53F-4-505(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title ~~[53A]~~ 53E, Chapter ~~[45]~~ 4, Part ~~[42]~~ 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

#### **R277-726-7. Provider Requirements and Responsibilities.**

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section ~~[53A-15-1210]~~ 53F-4-415 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours ~~[in order]~~ to facilitate parent ~~[information]~~ contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

- (a) consistency with course standards;
- (b) criminal background checks for provider employees;
- (c) documentation of student enrollment and participation; and
- (d) compliance with:
  - (i) the IDEA;
  - (ii) Section 504; and
  - (iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and
- (c) Sections ~~[53A-15-1206, 53A-15-1206.5, 53A-15-1207, and 53A-15-1208]~~ 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

- (i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;
- (ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;
- (iii) shall post fees on the provider website;~~[and]~~
- (iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment~~[-]~~;

(v) shall satisfy all requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title ~~[53A]~~ 53E, Chapter ~~[43]~~ 9, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as otherwise provided in this ~~[Subsection R277-726-9]~~ Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:



(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider ~~seeks to~~ suspends or expels a student from an online course for disciplinary reasons, the provider ~~shall notify the student's primary LEA of enrollment~~ is responsible for all student due process procedures, including the IDEA and Section 504 of the Rehabilitation Act of 1973.

(b) A provider is responsible for all due process procedures for student disciplinary actions in the provider's online program.

(10)(c) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is suspended for more than ~~10~~ ten days, using forms and processes developed by the Superintendent for this purpose.

(10)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings ~~in January and August~~ annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to ~~a~~ Utah secondary students in grades 9-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections ~~53A-15-1205(2)~~ 53F-4-501 and 53F-4-503.

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of ~~Section 53A-6-110~~ Rule R277-520;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section ~~53A-12-103~~ 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404; and

(f) shall not issue transcripts under the name of a third-party provider.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only ~~licensed Utah~~ educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of ~~Sections 53A-15-1503 and 53A-15-1504~~ Title 53G, Chapter 11, Part 4, Background Checks, prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section ~~53A-15-1210(2)~~ 53F-4-514 and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections ~~53A-15-1206 and 53A-15-1206.5~~ 53F-4-505, 53F-4-506, and 53F-4-508.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, educator credentials, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post ~~an~~ required information online on the provider's individual website including required assessment and accountability information.

(21)(a) A provider contracting with a third-party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third-party provider to ensure:

(i) a third-party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third-party provider is aligned with the Board's core standards and rules;

(iii) supervision of third-party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

~~(22) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.~~

**R277-726-8. Services to Students with Disabilities Participating in the Program.**

~~(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.~~

~~(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.~~

~~(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).~~

~~(1)2(a) If a student requests services related to an existing Section 504 accommodation[~~under Section 504 of the Rehabilitation Act of 1973~~], a provider shall:~~

~~(i) except as provided in Subsection ((1)2)(b), [prepare a Section 504]review and implement the plan for the student; and~~

~~(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.~~

~~(b) An LEA of enrollment shall provide a Section 504 plan of a student [described in Subsection (1)(a)]to a provider within 72 business hours if:~~

~~(i) the student is enrolled in a primary LEA of enrollment; and~~

~~(ii) the primary LEA of enrollment has a current Section 504 plan for the student.~~

~~(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:~~

~~(a) the student's primary LEA of enrollment shall:~~

~~(i) working with a provider LEA representative, [prepare] review or develop an IEP for the student [in accordance with the timelines required by the IDEA]within ten days of enrollment;~~

~~(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;~~

~~((1)iii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and~~

~~((1)iv) continue to claim the student in the primary LEA of enrollment's membership; and~~

~~(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (2)(a)(i).~~

~~(3) If a home or private school student participating in the program qualifies to receive special education services under the IDEA, the home or private school student:~~

~~(a) may waive the student's right to receive the special education services; or~~

~~(b) subject to the requirements of Subsection (4), enroll in the home or private school student's resident school for the purpose of receiving special education services.]~~

~~(4)3) If a home or private school student requests an evaluation for eligibility to receive special education services[~~as described in Subsection (3)(b)~~]:~~

~~(a) the home or private school student's resident school shall:~~

~~(i) evaluate the student's eligibility for services under the IDEA;~~

~~(ii) if eligible, prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;~~

~~(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and~~

~~((1)iv) claim the student in the resident school's membership; and~~

~~(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i).~~

**R277-726-9. Home and Private School Appropriation.**

~~(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:~~

~~(a) 50% of the total appropriation for home school students; and~~

~~(b) 50% of the total appropriation for private school students.~~

~~(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.~~

~~(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.~~

**R277-726-10. Other Information.**

~~(1) A primary school of enrollment shall set reasonable timelines and standards.~~

~~(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:~~

~~(a) school awards and honors;~~

~~(b) Utah High School Activities Association participation; and~~

~~(c) high school graduation.~~

**KEY: statewide online education program**

**Date of Enactment or Last Substantive Amendment:**  
**[December 8, 2016]2019**

**Notice of Continuation: December 15, 2015**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-1210; 53A-15-1213; 53A-1-401**

**Health, Family Health and  
Preparedness, Emergency Medical  
Services  
R426-8  
Emergency Medical Services Ground  
Ambulance Rates and Charges**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43608

FILED: 03/29/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Department of Health (Department) is

required to adjust ambulance maximum rates based on licensed ambulance providers fiscal data. The data is evaluated by the Department to determine if financial trends are causing the licensed ambulance providers to be fiscally viable. Current data was used to amend ambulance rates. Rule R426-8 is amended to update ambulance rates.

**SUMMARY OF THE RULE OR CHANGE:** Fiscal Reporting Guides (FRGs) are financial and statistical data collected from all emergency medical services (EMS) agencies statewide. The data collected showed EMS rates needed to be increased 3.0% so agencies statewide will have closer revenues matching expenses. Rule R426-8 needs to be amended to reflect these ground ambulance transport rate changes. Rates should be made effective on 07/01/2019 to coincide with Medicaid payment adjustments for the fiscal year. Fiscal costs and benefits will begin starting in FY 2020.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 8a

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The state budget will not be impacted as this is a user fee.
- ◆ **LOCAL GOVERNMENTS:** Local governments will be impacted slightly. The rates listed in this rule are increased 3.0%. The licensed ambulance provider billing will increase base rates in order to offset lost collections, wage increases, and the increased equipment costs. A total benefit of \$2,767,415 is anticipated for FY 2020.
- ◆ **SMALL BUSINESSES:** There is one small business that is a licensed ambulance provider. These proposed amendments will increase the fiscal benefit by an estimated \$15,085 for FY 2020.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The fiscal costs to persons who use an ambulance were

estimated based on anticipated billable ground ambulance patient transports using prior year numbers of patient transports. The fiscal analysis demonstrated a need for a 3.0% maximum base rate increase. Data was based on patient care reports submitted to the Department by the licensed ambulance providers. A total cost is estimated to be \$4,637,500 starting in FY 2020 for affected persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The fiscal benefits and costs to non-small businesses were estimated based on anticipated billable ground ambulance patient transports using prior year numbers of patient transports. The fiscal analysis demonstrated a need for a 3.0% maximum base rate increase. Data was based on patient care reports submitted to the Department by the licensed ambulance providers. No change in the current fiscal year (FY 2019) since these rule amendments will take effect on 07/01/2019. Subsequent years (FY 2020 and FY 2021) were projected as an estimate of growth in numbers of patients requiring ambulance transports. There are six non-small businesses licensed as ground ambulance providers in Utah. These businesses account for an estimated 40% of the total billable ambulance patient transports per year based on reported patient transports. At the average price increase per patient transport of \$35, these businesses are expected to receive \$1,855,000 in increased revenues per year starting in FY 2020.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that these rule amendments which increase the base rate will result in a fiscal benefit to businesses.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
EMERGENCY MEDICAL SERVICES  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov or mail at PO Box 142002, Salt Lake City, UT 84114-2004

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019**

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

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$4,637,500	\$5,000,000
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$4,637,500</b>	<b>\$5,000,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$2,767,415	\$2,984,800
Small Businesses	\$0	\$15,085	\$15,200
Non-Small Businesses	\$0	\$1,855,000	\$2,000,000
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$4,637,500</b>	<b>\$5,000,000</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

The fiscal benefits and costs to non-small businesses were estimated based on anticipated billable ground ambulance patient transports using prior year numbers of patient transports. The fiscal analysis demonstrated a need for a 3.0% maximum base rate increase. Data was based on patient care reports submitted to the Department by the licensed ambulance providers. No change in the current fiscal year (FY 2019) since the rule amendment will take effect on 07/01/2019. Subsequent years (FY 2020 and FY 2021) were projected as an estimate of growth in numbers of patients requiring ambulance transports. There are six non-small businesses licensed as ground ambulance providers in Utah. These businesses account for an estimated 40% of the total billable ambulance patient transports per year based on

reported patient transports. At the average price increase per patient transport of \$35, these businesses are expected to receive \$1,855,000 in increased revenues per year starting in FY 2020.

**R426. Health, Family Health and Preparedness, Emergency Medical Services.**

**R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.**

**R426-8-100. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ground ambulance providers in the State of Utah.

**R426-8-200. Ground Ambulance Transportation Revenues, Rates, and Charges.**

(1) Licensed ground ambulance providers ~~[operating under R426-3-]~~ shall not charge more than the rates described in this rule. In addition, the net income of licensed ground ambulance providers, including subsidies of any type, shall not exceed ten percent of gross revenue.

(a) Licensed ground ambulance providers may change rates at their discretion ~~[after notifying the Department,]~~ provided that the rates do not exceed the maximums specified in this rule.

(b) A licensed ground ambulance provider may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually ~~[on July 1,]~~ based on financial data as delineated by the Department to be submitted as detailed under R426-8-200(10). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport of a patient to a hospital or patient receiving facility are as follows:

(a) Ground Ambulance - ~~[\$772.00]~~ \$795.00 per transport;

(b) Advanced EMT Ground Ambulance - ~~[\$1,018.00]~~ \$1,049.00 per transport;

(c) Advanced EMT Ground Ambulance who was prior to June 30, 2016 licensed as an EMT-IA provider - ~~[\$1,254.00]~~ \$1,292.00 per transport;

(d) Paramedic Ground Ambulance - ~~[\$1,490.00]~~ \$1,535.00 per transport;

(e) Ground Ambulance with Paramedic on-board - ~~[\$1,490.00]~~ \$1,535.00 per transport if:

(i) a designated Emergency Medical Service dispatch center dispatches a licensed paramedic provider to treat the individual;

(ii) the licensed paramedic provider has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) a licensed ground ambulance provider who interfaces with a licensed paramedic rescue service and has an inter-local or equivalent agreement in place, dealing with reimbursing the paramedic ground ambulance licensed provider for services provided up to a maximum of ~~[\$472.00]~~ \$486.00 per transport.

(4) Mileage rates may be charged at a rate of \$31.65 per mile or fraction thereof, and computed from the point of patient pick-up to the point of patient delivery. Fuel fluctuation surcharges of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon, or gasoline prices exceed \$4.25 per gallon as invoiced.

(5) A surcharge of \$1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.

(6) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

- (a) Each patient will be assessed the transportation rate;
- (b) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(7) A round trip may be billed as two one-way trips. A licensed ground ambulance provider shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

(8) A licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:

- (a) supplies shall be priced fairly and competitively with similar products in the local area;
- (b) the individual does not refuse services; and
- (c) the licensed ground ambulance personnel assess or treats the individual.

(9) In the event of a temporary escalation of costs, a licensed ground ambulance provider may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(10) The licensed ground ambulance provider shall file with the Department within ~~[90 days]~~ 6 months of the end of each licensed provider's fiscal year, ~~[an operating]~~ a fiscal report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of ~~[operating]~~ fiscal reports received during the previous state fiscal year to the EMS Committee ~~[in the October quarterly meeting]~~ prior to adjusting maximum base rates for ground ambulance providers.

(11) The Department shall review licensed ground ambulance provider fiscal reports for compliance to Department established standards. The Department may perform financial audits as part of the review. ~~[If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department shall proceed in accordance with Utah Code Title 26-8a-504.]~~

(12) All licensed ground ambulance providers shall submit a written total number of patient transports for each calendar year to the Department for calculating Medicaid assessments.

(a) A written patient transport number shall be submitted within 90 days after the end of the calendar year.

(b) The submission shall include a written justification when patient transport numbers are not in agreement with patient care reports submitted to the Department as described in R426-7. Written

justifications shall include a description of data reporting errors, and a plan to correct future data submission.

~~[(e) The Department shall use submitted patient transport numbers to calculate ambulance service providers assessments as described in Utah Code Title 26-37a-104(5).]~~

~~[(d)c] Submitted patient transport numbers and justifications for patient transport numbers not in agreement with patient care report data may be evaluated, corrected, or audited by the Department. [If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department may proceed in accordance with Utah Code Title 26-8a-504.]~~

**KEY: emergency medical services, rates**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2018]~~ 2019**

**Notice of Continuation: November 10, 2015**

**Authorizing, and Implemented or Interpreted Law: 26-8a**

## Human Services, Substance Abuse and Mental Health **R523-7** Certification of Designated Examiners and Case Managers

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43605

FILED: 03/27/2019

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments are being proposed to increase the quality of case management for homeless individuals, and to strengthen and clarify the case management certification process and requirements.

**SUMMARY OF THE RULE OR CHANGE:** The amendments include: 1) "case managers" has been added to the purpose; 2) homeless services and service providers have been added as a sector that now requires certification for case managers; 3) certification itself has been clarified as being required for non-licensed professionals; 4) experience has been clarified to be specifically 400 hours in human services or related fields prior to application; and 5) a bachelor's degree has been added as a qualifying scholastic credential. Other changes involve experience: 1) the required case management practicum has been clarified to be 40 hours and Division approved; 2) applications and requests to waive requirements can only be approved by the Division of Substance Abuse and Mental Health (Division) director or designee; 3) certification follows the case manager between jobs if the provider is a qualifying employer; 4) a more defined corrective action process has been described; 5) continuing

education has been clarified to required four hours ethics and three hours suicide prevention; 6) request for information about conduct must be provided within 30 days or certification is automatically revoked; 7) failure of the Division administered exam has been clarified to twice within 30 days; and 8) agencies are no longer required to notify the Division when a certified case manager separates from employment.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-105 and Subsection 62A-15-602(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are potential costs to the Division in printing and mailing certificates, and time in reviewing applications and providing certificates. The Division does not have clear understanding of how many potential new applications will be received due to the expansion of certification for homeless services agencies, but the cost to create a certificate is about \$0.90 per certificate which includes bonded paper, gold seal, printing, signature and mail costs. Per-event time costs can be set at around 17 minutes per application. This calculation includes review of the application, receipt of information that a passing score was achieved, recording of the certification in the Division database, production of the certificate, signing the certificate and mailing the certificate. Based on these calculations, it will cost the Division an additional \$0.90 and 17 minutes to process all new case management certifications that are

generated by the changes in this rule. These rule changes have the potential of benefiting Division of Child and Family Services (DCFS) and the Division of Juvenile Justice Services (DJJS). Both agencies receive a portion of the child Medicaid carve out funding that was instituted by the Department of Human Services (DHS), to provide behavioral health services to children and youths through the Local Mental Health and Substance Abuse Authorities. Neither agency is currently able to bill Medicaid for Targeted Case Management in behavioral health, because certification for case managers has been limited to the local authorities, and Case Management Certification is required to bill behavioral health Targeted Case Management. The changes being proposed at this time, open Case Management Certification to any agency providing Targeted Case Management services. Gaining access to this money would be a slight challenge, because it would require both divisions to enter into some type of billing agreement with the local authorities in their areas, allowing them to bill the local authority directly if they offer behavioral health case management. The reason for this process is that the local authorities are the agencies that currently hold and control the Capitated Medicaid Behavioral Health contracts and the only ones to receive Medicaid reimbursements from the federal government. The billing rate would be \$13.64 per quarter hour of service. The Division has contacted both sister agencies and has been informed that neither one is interested in negotiating Targeted Case Management payments from the local authorities at this time.

◆ **LOCAL GOVERNMENTS:** These amendments are mostly clarifying in nature and do not require any additional actions from local governments than already exist.

◆ **SMALL BUSINESSES:** There are both a potential cost and benefit to agencies (624221 Temporary Shelters) receiving funds for homeless services. Anticipated costs are time, financial, and unmeasurable. Anticipated time costs include the amount of time it will take an employee to study and take the Division approved test, the amount of time that each employee will need to complete and document the 30 hours of CEUs to maintain their certification, and the time needed for the employee's supervisor to review, grade, and report on the Division approved test that will be administered. Anticipated financial costs include and reimbursement for CEU classes that might be offered to an employer. The anticipated unmeasurable cost is the agency productivity loss, in any one employee, because of reallocated time to certify and maintain certification. The Division has been unable to estimate these costs because there are too many variables. The benefit to these agencies is \$13.64 per quarter hour that can be billed to Medicaid for Targeted Case Management, and the number of agencies that qualify for this benefit is 20, based on the 20 agencies receiving homeless services funds.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are both a potential cost and benefit to individuals who receive a Case Management Certification, and work for a homeless shelter that received homeless services funds. Costs are both time and financial. Anticipated time costs include the amount of time it will take an individual to study, and take the Division approved test, and the amount of time needed to complete, document and report the 30 hours of CEUs to maintain certification. The anticipated financial costs include the cost of CEU courses if reimbursement from the employer is not available. The Division has been unable to estimate these costs because there are too many variables. The financial benefit to these individuals include possible increases in pay by obtaining certification, and the opportunity to move into a better paying job across agencies because the individual holds a Case Management Certification. The Division has been unable to estimate these benefits because there are too many variables.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are potential compliance costs associated with these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that these proposed rule changes will result in a fiscal impact to small businesses.

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

HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH  
195 N 1950 W

SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov  
 ♦ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Doug Thomas, Director

contractors or subcontractors to the Department of Human Services to provide homeless services; therefore, case manager certification will not be a requirement for their employees through this rule.

**R523. Human Services, Substance Abuse and Mental Health.**  
**R523-7. Certification of Designated Examiners and Case Managers.**

**R523-7-1. Authority.**  
 (1) This rule is promulgated under authority of Section 62A-15-105(2).

**R523-7-2. Purpose.**  
 (1) The purpose of this rule is to provide guidance on the process for designated examiners and case managers to attain certification from the Division of Substance Abuse and Mental Health (Division).

**R523-7-3. Designated Examiners Certification.**

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness, as defined in Subsection 62A-15-602(3).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application, the Director will initiate a review and examination of the applicant's qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>
Fiscal Benefits	\$0	\$0	\$0
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have fiscal impacts on non-small businesses' revenues or expenditures. No non-small businesses currently do, nor is it anticipated they will in the future, become

and pass the exam at the completion of the training with a minimum of 70% correct.

(d) The Division Director or designee will determine if experience and qualifications are satisfactory to meet the required standards. The Division Director or designee will also determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(e) Upon satisfactory completion of the required experience and training, the Division Director or designee will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

#### **R523-7-4. Certified Case [Management]Manager Certification.**

##### (1) Definitions.

(a) Certified Case [Management]Manager Certification means the process by which ~~an~~ a non-licensed individual obtains certification from the Division. ~~[that allows them to provide case]~~ Case [management]manager certification allows the Certified Case Manager to provide services for individuals with mental illness, [and/or] substance use disorders, and/or individuals experiencing homelessness.

~~[(+)]~~(2) Case Management services can be provided by:

~~[(A)]~~(a) A qualified provider, as defined in the Utah Medicaid Provider Manual~~], found at <https://medicaid.utah.gov/Documents/manuals/pdfs/Medicaid%20Provider20Manuals/Targeted%20Case%20Management/Serious%20Mental%20Illness/Archive/2014/SeriousMentalIllness1-14.pdf>~~ for Targeted Case Management for individuals with Serious Mental Illness or a Serious Emotional Disturbance; or

~~[(B)]~~(b) An individual under the supervision of a qualified provider employed or ~~[contracted by the local mental health or substance abuse authority]~~. The qualified provider shall be responsible for coordinating, advocating, linking and monitoring the Case Manager~~]~~ contracted by the Utah Department of Human Services, (DHS) a local mental health authority, a local substance abuse authority, a DHS licensed homeless shelter, or a targeted homeless service program defined as: public or private not-for-profit organizations, faith-based organizations, state departments and agencies, units of local governments and Indian tribal governments who provide services to children, individuals, and/or families who are experiencing homeless or at risk of experiencing homeless contracted by the Department of Workforce Services (DWS).

~~[(b)]~~(3) Certified Case Manager ~~[tasks]~~ duties include activities that assist individuals with:

~~[(+)]~~(a) Serious mental illness;

~~[(+)]~~(b) Serious emotional ~~[disorder, and] disturbance;~~

~~[(+)]~~(c) ~~[Individuals with substance]~~ Substance use disorders~~]; and~~

~~\_\_\_\_\_~~(d) Services related to homelessness;

~~\_\_\_\_\_~~(e) Case Managers tasks include;

~~[(+)]~~(e) Accessing medical and related therapeutic services;

and

~~[(+)]~~(f) ~~[To promote]~~ Promoting the individual's general health and their ability to function independently and successfully in the community.

~~[(2)]~~ A certified case manager must meet the following minimum standards:

~~\_\_\_\_\_~~(a) Be at least 18 years of age;

~~\_\_\_\_\_~~(b) Have at least a high school degree or a GED;

~~\_\_\_\_\_~~(c) Have at least have at least two years experience in Human Services or related field ~~(may include relevant education/volunteer activities);~~

~~\_\_\_\_\_~~(d) Be employed or subcontracted by a local mental health authority or a local substance abuse authority;

~~\_\_\_\_\_~~(4) A Certified Case Manager must meet the following minimum standards:

~~\_\_\_\_\_~~(a) Be at least 18 years of age;

~~\_\_\_\_\_~~(b) Be employed or subcontracted by DHS, a local mental health authority or a local substance abuse authority, a DHS licensed homeless shelter, or a targeted homeless program as defined in R523-7-4(2)(b); and

~~\_\_\_\_\_~~(c) Meet one of the following:

~~\_\_\_\_\_~~(i) Have at least a high school degree or a General Education Diploma/GED, and prior to applying for the Case Management Certification, obtain 400 hours experience within the previous 10 years of application submission in human services or related fields, which may include relevant education/volunteer activities; or

~~\_\_\_\_\_~~(ii) Be a Certified Peer Support Specialist or Family Resource Facilitator and have been actively working in the humans services field for at least 400 hours within the previous 10 years of the application submission date; or

~~\_\_\_\_\_~~(iii) Have at least a bachelor's degree in Human Services or a related field of study;

~~[(e)]~~(d) Pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

~~[(+)]~~(e) Have completed ~~an~~ a Division approved 40-hour supervised case management practicum.

~~[(3)]~~(5) ~~[An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-7-4(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issue a written decision regarding the request for waiver]~~ The Division Director or designee shall determine if experience and qualifications are satisfactory to meet the required standards, and if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

~~[(4)]~~(6) Applications and instructions to apply for certification to become a ~~[case manager]~~ Certified Case Manager can be obtained from the Division. Only complete applications supported by all necessary documents shall be considered.

~~\_\_\_\_\_~~(a) Applicants or the agency submitting the application shall respond to any Division requests for additional information regarding the application within 30 days or the Certified Case Managers certification may be denied.

~~[(+)]~~(b) Individuals ~~[will]~~ shall be notified in writing of disposition and determination to grant or deny the application within 30 days of ~~[completion of case management requirements]~~ submission including response to Division requests for additional information of the Certified Case Manager's application. The Division shall issue a certificate for three years, and the certificate shall be transferable across qualified employers.



~~[(b)](c)~~ If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.

~~[(5)](8)~~ Each ~~[certified case manager]~~ Certified Case Manager is required to complete and document ~~[eight]~~ 30 hours of continuing education (CEU) credits ~~[each calendar year related to mental health, substance use disorder or related topics]~~ related to mental health, substance use disorder homelessness, trauma informed care or related topics over the 3 year certification period. CEUs must include at least 4 hours of ethics and 3 hours of suicide prevention training.

(a) A ~~[certified case manager]~~ Certified Case Manager shall retain CEU documentation. Documentation should not be sent to the Division unless requested for an audit.

(b) Documents to verify CEU credits include:

(i) A certificate of completion documenting continuing education validation furnished by the presenter[?];

(ii) A letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) An official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

~~[(6) Certified case managers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the Department of Human Services Provider Code of Conduct Policy.~~

~~(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.~~

~~(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.~~

~~(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.~~

~~(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.]~~

~~(9) Certified Case Managers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the DHS Provider Code of Conduct Policy.~~

~~(a) Each employer that becomes aware of a Certified Case Manager engaging in unprofessional or unlawful conduct, or has violated the provider code of conduct shall:~~

~~(i) immediately take action to review the allegations,~~

~~(ii) take steps to ensure that all individuals involved with the allegation are protected, and~~

~~(iii) notify the Division within 30 days.~~

~~(b) Termination of certification shall be made effective immediately if the alleged violation(s) results in one or more of the following:~~

~~(i) personal financial gain through deception, or a business transaction with a client, by the Certified Case Manager,~~

~~(ii) physical or emotional harm to a person that is caused by the Certified Case Manager, or~~

~~(iii) a financial loss to a client, the State, or another employee that is caused by the Certified Case Manager.~~

~~(c) The Division shall take the following actions when it becomes aware of a Certified Case Manager in violation of the provider code of conduct that does not result in immediate termination:~~

~~(i) Within 30 days of becoming aware of the violation(s), the Division shall notify the Certified Case Manager, in writing, through a Notice of Agency Action specifying the area(s) of noncompliance.~~

~~(ii) Within 30 days of receiving a notice of Agency Action, the Certified Case Manager shall submit an acceptable written plan to the Division explaining how they will achieve compliance.~~

~~(iii) All plans shall demonstrate how the Certified Case Manager shall be in compliance within 30 days after receiving the Notice of Agency Action.~~

~~(iii) If an acceptable plan of action is not received by the Division within 30 days of sending the Notice of Agency Action, the Certified Case Manager shall be notified that their certification has been suspended until an acceptable plan is submitted to the Division.~~

~~(iv) A Certified Case Manager must cease providing any and all case management services until a suspension is lifted.~~

~~(d) The Division shall revoke the certification of any Certified Case Manager for the following reasons:~~

~~(i) The Certified Case Manager fails to provide the Division with written evidence of compliance to a plan of action within 30 days after the receiving a Notice of Agency Action that their certification has been suspended.~~

~~(ii) The Certified Case Manager continues to provide case management services during the period of a suspension; or~~

~~(iii) The Certified Case Manager receives more than two notices of noncompliance with the Provider Code of Conduct in a one-year period.~~

~~(e) Any Certified Case Manager whose certification has been revoked may request an informal hearing with the Division director or designee, in writing, within 10 business days of receiving notice of revocation.~~

~~(f) The Division director or designee shall review the request and determine to uphold, amend or reverse the action within 10 business days, and the Division shall inform the Certified Case Manager of the decision in writing.~~

~~(g) Any Certified Case Manager with a revoked certification may not reapply for recertification for a period of 12 months.~~

~~[(7)](10)~~ If a ~~[certified case manager]~~ Certified Case Manager fails to complete the requirements for CEUs, their certificate will be revoked or allowed to expire and will not be renewed until the required CEUs have been completed and submitted to the Division for approval.

~~[(8)](11)~~ If an individual fails the Division examination twice within a 30 day period of time, they must wait 30 days before taking the examination again. ~~[-The individual may only attempt to pass the examination two times within a twelve-month period.]~~

~~(9) The case manager's certification shall be posted and available upon request.~~

~~(10) The LMHA/LSAA shall notify the Division in writing when a Case Manager is no longer employed or subcontracted. The Case Manager certification shall be void upon separation of employment or termination of contract with the LMHA/LSAA.]~~

~~(12) The Certified Case Manager's certification shall be posted and available upon request.~~

**KEY: designated examiners, involuntary commitment, case managers**

**Date of Enactment or Last Substantive Amendment: [December 22, 2015]2019**

**Authorizing, and Implemented or Interpreted Law:** 62A-15-105(2); 62A-15-602(3)(5)

**Human Services, Recovery Services  
R527-38  
Unenforceable Cases**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43593

FILED: 03/18/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment changes a criterion which must be satisfied to categorize a case as unenforceable pursuant to 45 CFR 303.11.

**SUMMARY OF THE RULE OR CHANGE:** Section R527-38-2 is amended so that the unenforceable case criteria includes that the children on a Title IV-E case shall have been out of state custody for at least one year instead of being emancipated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 45 CFR 303.11 and Section 62A-1-111 and Section 62A-11-107

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment is changing a criterion which must be satisfied to categorize a case as unenforceable. Therefore, there is no anticipated cost or savings to the state budget due to the amendment to this rule.

◆ **LOCAL GOVERNMENTS:** Administrative rules of the Office of Recovery Services (ORS)/Child Support Services (CSS) do not apply to local governments. This rule concerns ORS categorizing cases as unenforceable. Therefore, there are no anticipated costs or savings for local governments due to this amendment.

◆ **SMALL BUSINESSES:** The amendment to this rule does not change ORS/CSS processes or procedures regarding sending income withholdings or the volume of income withholdings sent. Therefore, there are no anticipated costs or savings to small businesses due to the amendment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated impact to other persons due to the amendment to this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated cost to other persons due to the amendment to this rule.

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

There are no anticipated fiscal impacts to businesses because the change to this rule does not change ORS/CSS processes or procedures regarding sending income withholdings or the volume of income withholdings sent.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY, UT 84102-4211  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov
- ◆ Scott Weight by phone at 801-741-7435, by FAX at 801-536-8509, or by Internet E-mail at sweigh2@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Liesa Stockdale, Director

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This proposed amendment is not expected to have any fiscal impact on non-small businesses. This rule establishes the criteria which a child support case must satisfy to be categorized as unenforceable. This change is to meet the requirements set forth by 45 CFR 303.11, and will not change or alter the process in which ORS operates in regards to non-small businesses.

**R527. Human Services, Recovery Services.**

**R527-38. Unenforceable Cases.**

**R527-38-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to establish the criteria which a support case must satisfy to be categorized as unenforceable pursuant to 45 CFR 303.11.

**R527-38-2. Unenforceable Case Criteria.**

1. All of the following criteria must be met for a support case to be categorized as unenforceable:

- a. The case is currently not a paying case; in that payments shall not have been posted to the case during the last 12 months; and payments are not expected to be posted in the near future.
- b. No federal offset money has been received by the Office of Recovery Services (ORS) during the last two years.
- c. No state tax money shall have been received by ORS within the most recent two years.
- d. ORS shall have collected \$1,000 or less on the case over the last two years by methods other than federal offset or state tax.
- e. There are no financial institution accounts belonging to the non-custodial parent that can be attached.
- f. No executable assets belonging to the non-custodial parent have been identified.
- g. If the matter concerns a Title IV-E case, all of the children identified as being part of the case shall have been ~~emancipated~~ out of state custody for at least one year or parental rights shall have been terminated.

**KEY: child support**

**Date of Enactment or Last Substantive Amendment:** ~~[March 25, 2013]~~ 2019

**Notice of Continuation: November 26, 2018**

**Authorizing, and Implemented or Interpreted Law: 45 CFR 303.11; 62A-1-111; 62A-11-107**

**Insurance, Administration**  
**R590-225-3**  
**Documents Incorporated by Reference**

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE NO.: 43615  
FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended to update an incorporated reference to the most recent edition.

**SUMMARY OF THE RULE OR CHANGE:** Two references to documents incorporated by reference are being updated to reflect the most recent editions.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-19a-203 and Section 31A-2-201 and Section 31A-2-201.1 and Section 31A-2-202

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Updates NAIC Uniform Property and Casualty Transmittal Document, published by NAIC, January 1, 2019
- ◆ Updates NAIC Uniform Property and Casualty Coding Matrix, published by NAIC, January 1, 2019

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the forms that are being incorporated by reference are free for member states to use. There is no alteration to the Department's actions. These changes are merely updating this rule to incorporate the most recent editions of the forms.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. These rule changes only apply to the relationship between the Department and its licensed property and casualty insurers.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The forms being incorporated by reference have been changed, and this amendment is being made to reflect the most recent editions. The forms in question are free for insurers to use, just as they have been.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. The forms being incorporated by reference have been changed, and this amendment is being made to reflect the most recent editions. The forms in question are free for insurers to use, just as they have been.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated costs for any affected persons. Property and casualty insurers will be able to download the forms for free as they normally do. These changes merely update this rule to reflect the most recent editions of the forms.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019  
 THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because they merely update this rule to incorporate the most recent edition of two forms the Department requires but that are published by another entity.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

**R590. Insurance, Administration.**

**R590-225. Submission of Property and Casualty Rate and Form Filings.**

**R590-225-3. Documents Incorporated by Reference.**

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing forms are hereby incorporated by reference and are available on the department's web site, <http://www.insurance.utah.gov>.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, [2017]2019;

(b) "NAIC Uniform Property and Casualty Coding Matrix", dated January 1, [2017]2019;

(c) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated April 2017; and

(d) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated April 2017.

**KEY: property casualty insurance filing**

**Date of Enactment or Last Substantive Amendment:** [December 8, 2017]2019

**Notice of Continuation:** February 20, 2014

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-19a-203

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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

**Public Service Commission,  
Administration  
R746-310  
Uniform Rules Governing Electricity  
Service by Electric Utilities**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43603

FILED: 03/26/2019

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R746-310-3 currently addresses meter errors related to fast, slow, or non-registering operation and their corresponding backbilling timelines. These rule amendments are intended to add the distinction between a meter that fails to register correctly and a meter that completely fails to register any usage. These rule amendments specify an incorrectly registering meter and the utility's authorized backbilling timeframe.

SUMMARY OF THE RULE OR CHANGE: These rule amendments are intended to clarify the distinction between a

meter that fails to register correctly and a meter that completely fails to register any usage. These rule amendments specify an incorrectly registering meter and the utility's authorized backbilling timeframe.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-3-7 and Section 54-4-1 and Section 54-4-14 and Section 54-4-23 and Section 54-4-8

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget unless the state has an incorrectly registering meter, which may result in a twenty-four month estimated backbill.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local governments unless a local government has an incorrectly registering meter, which may result in a twenty-four month estimated backbill.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses unless a small business have an incorrectly registering meter, which may result in a twenty-four month estimated backbill.
- ◆ 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 unless such persons have an incorrectly registering meter, which may result in a twenty-four month estimated backbill.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons unless the affected person has an incorrectly registering meter, which may result in a twenty-four month estimated backbill.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impact these rule amendments may have on a business other than the possible costs a business may face if it has an incorrectly registering meter, which may result in a twenty-four month estimated backbill.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Michael Hammer by phone at 801-530-6729, or by Internet E-mail at michaelhammer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019  
THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Michael Hammer, Administrative Law Judge

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**\*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 Small and Non-Small Businesses**  
 Section R746-310-3 currently addresses meter errors related to fast, slow, or non-registering operation and their corresponding backbilling timelines. These rule amendments are intended to add the distinction between a meter that fails to register correctly and a meter that completely fails to register any usage. These rule amendments specify an incorrectly registering meter and the utility's authorized backbilling timeframe.

PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

**R746. Public Service Commission, Administration.**  
**R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.**  
**R746-310-1. General Provisions.**

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-1-109, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1998 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 2017 edition of the National Electrical Safety Code, C2-2017, as promulgated by the Institute of Electrical and Electronics Engineers, which is incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

**R746-310-2. Customer Relations.**

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefore. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

**F. Customer Complaints --**

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-1-201, Complaints.

**G. Service Interruptions --**

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

**R746-310-3. Meters and Meter Testing.****A. Reference and Working Standards**

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 2014 edition of the American National Standards for Electric Meters Code for Electricity Metering, ANSI C12.1-2014, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register any usage, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

4. Incorrectly-registering meter -- If a meter registers usage, but fails to register the correct amount of electric power or energy used by the customer for any reason, other than as described in Subsection R746-310-3(C)(1) and (2), the amount of such use will be estimated by the utility from the best available information, and billed for a period not exceeding twenty-four months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

**R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.**

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems,

showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the 2011 edition of the American National Standard for Electrical Power Systems and Equipment-Voltage Ratings (60 Hz), ANSI C84.1-2011, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

**R746-310-5. Design, Construction and Operation of Plant.**

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

**R746-310-6. Line Extensions.**

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.



**R746-310-7. Accounting.**

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

**R746-310-8. Billing Adjustments.**

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- The account holder may be notified by mail, by phone, or by a personal visit, of the reason for the backbill. This notification shall be followed by, or include, a written explanation of the reason for the backbill that shall be received by the customer before the due date and be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- ~~If a[A] utility is going to render a backbill it must do so within~~~~shall not render a backbill more than~~ three months ~~after~~~~from the time~~ the utility ~~actually became~~~~becomes~~ aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer

knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

**R746-310-9. Overbilling.**

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;
2. use of an incorrect watt-hour constant;
3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;
4. billing based on a switched meter condition where the customer is billed on the incorrect meter;
5. meter turnover, or billing for a complete revolution of a meter which did not occur;
6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;
7. incorrect meter reading or recording by the utility; and
8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds \$50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

**R746-310-10. Preservation of Records.**

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

**KEY:** public utilities, utility regulation, electric safety codes, electric utility industries

**Date of Enactment or Last Substantive Amendment:** [~~October 24, 2016~~]2019

**Notice of Continuation:** July 19, 2017

**Authorizing, and Implemented or Interpreted Law:** 54-3-1; 54-3-7; 54-4-1; 54-4-8; 54-4-14; 54-4-23

School and Institutional Trust Lands,  
Administration  
**R850-5-300**  
Royalties

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 43613

FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule was promulgated many years ago and is being updated to be more clear and reduce unneeded text.

**SUMMARY OF THE RULE OR CHANGE:** These changes clarify and consolidate this rule to remove redundant or unnecessary language.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53C-1-302(1)(a)(ii)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These proposed rule changes are not anticipated to have any additional costs or savings as it is removing unnecessary and outdated language so it is more clear and concise.

♦ **LOCAL GOVERNMENTS:** These proposed rule changes are not anticipated to have any additional costs or savings as it is removing unnecessary and outdated language so it is more clear and concise.

♦ **SMALL BUSINESSES:** These proposed rule changes are not anticipated to have any additional costs or savings as it is removing unnecessary and outdated language so it is more clear and concise.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed rule changes are not anticipated to have any additional costs or savings as it is removing unnecessary and outdated language so it is more clear and concise.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No anticipated compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These proposed rule changes are not anticipated to have any additional costs or savings as it is removing unnecessary and outdated language so it is more clear and concise.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Lisa Wells by phone at 801-538-5154, or by Internet E-mail at lisawells@utah.gov

♦ Merritt Dunn by phone at 801-538-5130, or by Internet E-mail at merrittdunn@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/01/2019

**AUTHORIZED BY:** David Ure, Director

Subsection 53C-1-201(3)(c) exempts the School and Institutional Trust Lands Administration from the requirement to conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, as required in Subsection 63G-3-301(5).

**R850. School and Institutional Trust Lands, Administration.**

**R850-5. Payments, Royalties, Audits, and Reinstatements.**

**R850-5-300. Royalties.**

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Failure to provide such a report may, after proper notification, subject the lease to cancellation. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described below, may not be accepted by the agency and may be returned~~[and may be made subject to the penalty provisions of this rule].~~

i) Any report submitted~~[including adjustments to reporting periods more than] 24 months [prior to the current report period] after the royalty due date.~~

ii) Amendments to prior report periods creating a net adjustment of less than \$10.

iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Actions, plus 4%.~~[However, interest will not be assessed for prior period adjustments or amendments except as provided in R850-5-300(1)(c) and for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than \$30.]~~

**KEY:** ~~[administrative procedures]~~ audits, royalties, payments, reinstatements

**Date of Enactment or Last Substantive Amendment:** ~~[October 22, 2013]~~ **2019**

**Notice of Continuation:** June 27, 2017

**Authorizing, and Implemented or Interpreted Law:** 53C-1-302(1)(a)(ii)

**School and Institutional Trust Lands,  
Administration  
R850-21**

**Oil, Gas and Hydrocarbon Resources**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 43616

FILED: 04/01/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule was written several years ago and is in need of reorganization and clarification using current terminology and incorporating updated agency practices. There were very few substantive changes made.

**SUMMARY OF THE RULE OR CHANGE:** This rule is basically the same except for the following changes: In Section R850-21-175, changes refine the definitions to be consistent with industry terminology and current agency practices. A definition of the term "spud" was added. In Section R850-21-300, changes were made to make this rule consistent with the current statute. In Subsection R850-21-500(1)(b), a substantive change of minimum annual rental

from \$40 to \$500 is made. In Subsection R850-21-500(3)(d), for oil and gas leases committed to a unit, the provision providing for an automatic extension is deleted. In Subsection R850-21-500(3)(e), leases currently in an active unit that terminates or contracts on or before 01/01/2021, will be entitled to an automatic two-year lease extension. Leases that are committed to a new unit formed after the effective date of these proposed rule amendments will not be entitled to an automatic extension. In Subsection R850-21-500(4), changes were made to the definitions and procedures related to a shut-in gas well's status as a well capable of producing in paying quantities. In Section R850-21-600, changes are made to be consistent with the new definitions in Section R850-21-175.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53C-1-302(1)(a)(ii) and Title 53C, Chapter 2 et seq.

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no cost or savings. The effect is neutral except for implementing the change from \$40 to \$500 for the minimum annual rental required in the oil and gas lease as set out at Subsection R850-21-500(1)(b). The repealed annual \$40 charge applied to oil and gas leases of 10 acres or less. The reenacted \$500 annual charge will apply to oil and gas leases of 250 acres or less in the reenactment. During the calendar year, the agency issued no leases of 10 acres or less, and only issued 15 leases of 250 acres or less.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings. The effect is neutral except for implementing the change from \$40 to \$500 for the minimum annual rental required in the oil and gas lease as set out at Subsection R850-21-500(1)(b). The repealed annual \$40 charge applied to oil and gas leases of 10 acres or less. The reenacted \$500 annual charge will apply to oil and gas leases of 250 acres or less in the reenactment. During the calendar year, the agency issued no leases of 10 acres or less, and only issued 15 leases of 250 acres or less.

◆ **SMALL BUSINESSES:** There will be no cost or savings. The effect is neutral except for implementing the change from \$40 to \$500 for the minimum annual rental required in the oil and gas lease as set out at Subsection R850-21-500(1)(b). The repealed annual \$40 charge applied to oil and gas leases of 10 acres or less. The reenacted \$500 annual charge will apply to oil and gas leases of 250 acres or less in the reenactment. During the calendar year, the agency issued no leases of 10 acres or less, and only issued 15 leases of 250 acres or less.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings. The effect is neutral except for implementing the change from \$40 to \$500 for the minimum annual rental required in the oil and gas lease as set out at Subsection R850-21-500(1)(b). The repealed annual \$40 charge applied to oil and gas leases of 10 acres or less. The reenacted \$500 annual charge will apply to oil and gas leases of 250 acres or less in the reenactment.

During calendar year, the agency issued no leases of 10 acres or less, and only issued 15 leases of 250 acres or less.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The only compliance cost would be a change in annual minimum rental from \$40 to \$500 for oil and gas leases issued subsequent to the effective date of the reenactment in Subsection R850-21-(1)(b).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no cost or savings. The effect is neutral except for implementing the change from \$40 to \$500 for the minimum annual rental required in the oil and gas lease as set out at Subsection R850-21-500(1)(b). The repealed annual \$40 charge applied to oil and gas leases of 10 acres or less. The reenacted \$500 annual charge will apply to oil and gas leases of 250 acres or less in the reenactment. During the calendar year, the agency issued no leases of 10 acres or less, and only issued 15 leases of 250 acres or less.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ LaVonne Garrison by phone at 801-538-5197, by FAX at 801-355-0922, or by Internet E-mail at lavonnegarrison@utah.gov

◆ Lisa Wells by phone at 801-538-5154, or by Internet E-mail at lisawells@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2019

AUTHORIZED BY: David Ure, Director

Subsection 53C-1-201(3)(c) exempts the School and Institutional Trust Lands Administration from the requirement to conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, as required in Subsection 63G-3-301(5).

**R850. School and Institutional Trust Lands, Administration.**

**R850-21. Oil, Gas and Hydrocarbon Resources.**

**[R850-21-100. Authorities.**

— This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and

~~Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and management of trust-owned lands and oil, gas and hydrocarbon resources.~~

**~~R850-21-150. Planning.~~**

~~— Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated pursuant to R649.~~

**~~R850-21-175. Definitions.~~**

~~— The following words and terms, when used in Section R850-21 shall have the following meanings, unless otherwise indicated:~~

~~— 1. Act: Utah Code 53C-1 et seq.~~

~~— 2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.~~

~~— 3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.~~

~~— 4. Assignment(s): a conveyance of all or a portion of the lessee's record title, non-working interest, or working interest in a lease.~~

~~— (a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.~~

~~— (b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.~~

~~— (c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.~~

~~— (d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.~~

~~— (e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net profit, or carried interests or other non-working interests.~~

~~— 5. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.~~

~~— 6. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the delay rentals and royalties set forth in a lease in an application as consideration for the issuance of such lease.~~

~~— 7. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for pooling or unitization which form a logical unit for exploration, development or drilling operations.~~

~~— 8. Delay Rental: a sum of money as prescribed in the lease payable to the agency for the privilege of deferring the commencement of drilling operations or the commencement of production during the term of the lease.~~

~~— 9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.~~

10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.

11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.

12. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

13. Lease: an oil, gas and hydrocarbon lease covering the commodities defined in R850-21-200(1) issued by the agency.

14. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.

15. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive oil and gas lease application process which would constitute one lease when issued.

16. Lessee: a person or entity holding a record title interest in a lease.

17. NGL: natural gas liquids.

18. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

19. Paying Quantities: the gross income from the leased substances produced and sold (after deduction for taxes and lessor's royalty) that exceeds the cost of operation.

20. Qualified Interest Owner: a person or legal entity who meets the requirements of R850-3-200 of these rules.

21. Rental: the amount due and payable on the anniversary of the effective date of a lease to maintain the lease in full force and effect for the following lease year.

22. Shut-in Gas Well: a gas well which is physically capable of producing gas in paying quantities, but, for which the producible gas cannot be marketed at a reasonable price due to existing marketing or transportation conditions.

23. Shut-In or Minimum Royalty: the amount of money accruing and payable to the agency in lieu of rental or delay rental beginning from the first anniversary date of the lease on or after the initial discovery of oil or gas in paying quantities on the leasehold or the allocation of production to the leasehold. Minimum royalty accrues beginning from the anniversary date of a lease but is not payable until the end of the year. Actual royalty accruing from a lease or allocated to a unitized or communitized lease during the lease year is credited against the minimum royalty obligation for the lease year. If the royalty from production does not equal or exceed the required minimum royalty for the lease year, the lessee is obligated to pay the difference.

24. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

25. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust,

which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

26. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

27. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

#### **R850-21-200. Classification of Oil, Gas and Hydrocarbons.**

Oil, Gas, and Hydrocarbon leases shall cover oil, natural gas, including gas producible from coal formations or associated with coal bearing formations, and other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form) and also including sulfur, helium and other gases not individually described. The oil, gas, and hydrocarbon category shall not include coal, oil shale, tar sands or gilsonite.

#### **R850-21-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of oil, gas and hydrocarbon resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than \$1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

~~(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.~~

~~(b) Non-Competitive Leasing By Over-The-Counter Filing.~~

~~(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date of the opening of bids for which no bid was received for said lands under the competitive bid offering.~~

~~(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than \$1 per acre, or fractional acre thereof, which will constitute the delay rental for the first year of the lease.~~

~~(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is~~

~~materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.~~

~~If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.~~

~~(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.~~

~~(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to the applicant minus the application fee.~~

~~(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.~~

~~(c) Competitive Leasing by Electronic Leasing.~~

~~(i) The director may designate leasing units for bidding by electronic means as a vehicle for competitive leasing. Leases will be awarded to the highest bonus bid per acre made by a qualified application. Electronic leasing may be in addition to or in place of the bidding processes set out at R850-21-300(1)(a) or (b) at the discretion of the director. A list of available leasing units and a link to the bidding form will be provided at the agency website.~~

#### **R850-21-400. Availability of Lands for Lease Issuance.**

~~1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust-owned land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.~~

~~2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.~~

~~3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.~~

#### **R850-21-500. Lease Provisions.**

~~The following provisions, terms and conditions shall apply to all leases granted by the agency:~~

##### ~~1. Delay Rentals and Rental Credits:~~

~~(a) The delay rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year at the time the lease is offered.~~

~~(b) The minimum annual delay rental on any lease, regardless of the amount of acreage, shall in no case be less than \$40.~~

~~(c) Delay rental payments shall be paid each year on or before the lease anniversary date, unless otherwise stated in the lease.~~

~~(d) Any overpayment of delay rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.~~

~~(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.~~

~~(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.~~

~~2. Royalty Provisions: the production royalty rate shall not be less than 12.5% of gross proceeds minus costs of transportation off lease, at the time the lease is offered.~~

~~3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.~~

~~4. Continuance of a Lease after Expiration of the Primary Term:~~

~~(a) A lease shall be continued after the primary term has expired so long as:~~

~~(i) the leased substance is being produced in paying quantities from the leased premises or from other lands pooled, communitized or unitized with committed lands; or~~

~~(ii) the agency determines that the lessee or designated operator:~~

~~(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands pooled, communitized, or unitized with committed lands; and~~

~~(B) pays the annual minimum royalty set forth in the lease.~~

~~\_\_\_\_\_ (b) Diligent operations may include cessation of operations not to exceed 90 days in duration or a cumulative period of 180 days in one calendar year.~~

~~\_\_\_\_\_ 5. Pooling, Communitization or Unitization of Leases.~~

~~\_\_\_\_\_ (a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.~~

~~\_\_\_\_\_ (b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.~~

~~\_\_\_\_\_ (c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.~~

~~\_\_\_\_\_ (d) The term of all leases included in any cooperative or unit plan of oil and gas development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.~~

~~\_\_\_\_\_ (e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.~~

~~\_\_\_\_\_ 6. Shut-in Gas Wells Producing Gas in Paying Quantities: to qualify as a shut-in gas well capable of producing gas in paying quantities:~~

~~\_\_\_\_\_ (a) a minimum royalty shall be paid in an amount not less than the current annual minimum royalty provided for in the lease;~~

~~\_\_\_\_\_ (b) the terms of the lease shall provide the basis upon which the minimum royalty is to be paid by the lessee for a shut-in gas well; and~~

~~\_\_\_\_\_ (c) the director may, at any time, require written justification from the lessee that a well qualifies as a shut-in gas well. A shut-in gas well will not extend a lease more than five years beyond the original primary term of the lease.~~

~~\_\_\_\_\_ 7. Oil/Condensate/Gas/NGL Reporting and Records Retention:~~

~~\_\_\_\_\_ (a) Notwithstanding the terms of the lease agreements, gas and NGL report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.~~

~~\_\_\_\_\_ (b) The extension of payment and reporting time for gas and NGL's does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production as currently provided in the lease form.~~

~~\_\_\_\_\_ (c) A lessee, operator, or other person directly involved in developing, producing or disposing of oil or gas under a lease through the point of first sale or point of royalty computation, whichever is later, shall establish and maintain records of such activities and make any reports requested by the director to implement or require~~

~~compliance with these rules. Upon request by the director or the director's designee, appropriate reports, records or other information shall be made available for inspection and duplication.~~

~~\_\_\_\_\_ (d) Records of production, transportation and sales shall be maintained for six (6) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun, involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.~~

~~\_\_\_\_\_ 8. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.~~

~~\_\_\_\_\_ 9. Other lease provisions:~~

~~\_\_\_\_\_ The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.~~

~~**R850-21-600. Transfer by Assignment or Operation of Law.**~~

~~\_\_\_\_\_ 1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.~~

~~\_\_\_\_\_ 2. Transfer by Assignment:~~

~~\_\_\_\_\_ (a) An assignment of either a record title, working or non-working interest in a lease must:~~

~~\_\_\_\_\_ (i) be expressed in a good and sufficient written legal instrument;~~

~~\_\_\_\_\_ (ii) be properly executed, acknowledged and clearly set forth:~~

~~\_\_\_\_\_ (A) the serial number of the lease;~~

~~\_\_\_\_\_ (B) the land involved;~~

~~\_\_\_\_\_ (C) the name and address of the assignee;~~

~~\_\_\_\_\_ (D) the name of the assignor;~~

~~\_\_\_\_\_ (E) the interest transferred;~~

~~\_\_\_\_\_ (iii) be accompanied by a certification that the assignee is a qualified interest owner; and~~

~~\_\_\_\_\_ (iv) include a certification of net revenue interest.~~

~~\_\_\_\_\_ (b) Lessees who are assigning a lease shall:~~

~~\_\_\_\_\_ (i) prepare and execute the assignments in duplicate, complete with acknowledgments;~~

~~\_\_\_\_\_ (ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and~~

~~\_\_\_\_\_ (iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.~~

~~\_\_\_\_\_ (c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.~~

~~\_\_\_\_\_ (d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.~~

~~\_\_\_\_\_ (e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.~~

~~\_\_\_\_\_ (f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.~~

~~\_\_\_\_\_ (g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.~~

~~\_\_\_\_\_ (h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.~~

~~\_\_\_\_\_ (i) Mass assignments are allowed, provided:~~

~~\_\_\_\_\_ (i) the requirements set forth in paragraph R850-21-600(2) are met;~~

~~\_\_\_\_\_ (ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;~~

~~\_\_\_\_\_ (iii) the prescribed fee is paid for each lease affected; and~~

~~\_\_\_\_\_ (iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.~~

~~\_\_\_\_\_ (j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.~~

~~\_\_\_\_\_ (k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.~~

### ~~\_\_\_\_\_ 3. Transfer by Operation of Law:~~

~~\_\_\_\_\_ (a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:~~

~~\_\_\_\_\_ (i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as~~

~~required under the probate laws of the state of Utah (Section 75-1-101 et seq.);~~

~~\_\_\_\_\_ (ii) a list containing the serial number of each lease interest affected;~~

~~\_\_\_\_\_ (iii) a statement that the transferee(s) is a qualified interest owner;~~

~~\_\_\_\_\_ (iv) the required filing fee for each separate lease in which an interest is transferred; and~~

~~\_\_\_\_\_ (v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.~~

~~\_\_\_\_\_ (b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.~~

~~\_\_\_\_\_ (c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.~~

### **R850-21-700. Operations Plan and Reclamation:**

~~\_\_\_\_\_ 1. The lessee or designated operator shall submit to, and must receive the approval of, the agency for a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of lands contained in a lease. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee or designated operator shall commence actual drilling operations on any well or prior to commencing any surface disturbance associated with the activity on lands contained within a lease, the operator or lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of the application for a permit to drill (APD) with UDOGM. The agency will review any request for drilling operations and will grant approval providing that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the APD for oil, gas or hydrocarbon resources administered by the agency is required prior to approval by UDOGM. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.~~

~~\_\_\_\_\_ 2. Prior to approval of the APD, the agency shall require the lessee or designated operator to:~~

~~\_\_\_\_\_ (a) provide when requested, a cultural, paleontological and biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies;~~



\_\_\_\_\_ (b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

\_\_\_\_\_ (c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased lands where the surface of said lands are necessary for the development of the lease; and

\_\_\_\_\_ (d) keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the agency. A copy of the log, as well as any data related to exploration drill holes shall be deposited with the agency at the agency's request.

\_\_\_\_\_ 3. Oil and gas drilling, or other operations which disturb the surface of lands contained within or on the leased lands shall require surface rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the rules and regulations administered by the UDOGM.

\_\_\_\_\_ In all cases, the lessee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency prior to commencement of operations. This sloping shall be a concurrent part of the operation of the leased premises to the extent that the operation shall not at any time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be

allowed to become a hazard to persons or livestock. All material removed from the premises shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.

\_\_\_\_\_ The agency shall require that all topsoil in the affected area be removed, stockpiled, and stabilized on the leased premises until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency. All mud pits shall be filled and materials and debris removed from the site.

\_\_\_\_\_ 4. All lessees or designated operators under oil, gas and hydrocarbon leases shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

#### **R850-21-800. Bonding.**

##### **1. Bond Obligations.**

\_\_\_\_\_ (a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in

the amount set forth in R649-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

\_\_\_\_\_ (b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

\_\_\_\_\_ (c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

\_\_\_\_\_ (d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

##### **(i) Surety Bonds.**

\_\_\_\_\_ Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah;

##### **(ii) Personal Bonds.**

\_\_\_\_\_ Personal bonds shall be accompanied by:

\_\_\_\_\_ (A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

\_\_\_\_\_ (B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

\_\_\_\_\_ (C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

\_\_\_\_\_ (D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

\_\_\_\_\_ (E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

\_\_\_\_\_ (F) any other type of surety approved by the agency.

##### **2. Bond Amounts.**

\_\_\_\_\_ The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

~~\_\_\_\_\_ (a) a statewide blanket bond in the minimum amount of \$15,000 covering exploration and production operations on all agency leases held by lessee; or~~

~~\_\_\_\_\_ (b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than \$5,000 unless waived in writing by the director.~~

~~\_\_\_\_\_ 3. Bond Default:~~

~~\_\_\_\_\_ (a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.~~

~~\_\_\_\_\_ (b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.~~

~~\_\_\_\_\_ (c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.~~

~~\_\_\_\_\_ (d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.~~

~~\_\_\_\_\_ 4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.~~

~~\_\_\_\_\_ 5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.~~

~~**R850-21-1000. Multiple Mineral Development (MMD) Area Designation:**~~

~~\_\_\_\_\_ 1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The~~

~~lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.~~

~~\_\_\_\_\_ 2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).]~~

~~**R850-21-100. Authorities.**~~

~~This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and which govern the management of trust-owned lands and oil, gas and hydrocarbon resources.~~

~~**R850-21-150. Planning**~~

~~Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated by UDOGM pursuant to Utah Administrative Code Rule R649.~~

~~**R850-21-175. Definitions.**~~

~~Except as specifically defined below, the definitions set forth at R850-1-200 shall be applicable. The following words and terms, when used in Section R850-21, shall have the following meanings:~~

~~1. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.~~

~~2. Assignment(s): a transfer of all or a portion of the lessee's record title or operating rights in a lease.~~

~~(a) Mass Assignment: an assignment that affects two or more leases and identifies the leases affected thereby on an attached exhibit to the assignment.~~

~~(b) Non-leasehold Assignment: an assignment that transfers an interest in a lease that is not record title or operating rights, for example, but not limited to, overriding royalty, net profits, or other production payments.~~

~~3. Certification of Net Revenue Interest: a written declaration of oath to the agency that must accompany assignments of record title or operating rights in leases issued beginning April 1, 2005, certifying that the total net revenue interest (NRI) in the lease has not been reduced to less than 80 percent of 100 percent NRI.~~

~~4. Designated Operator: the person or entity that has been granted authority through a Designation of Operator form to conduct operations on the lease or a portion thereof.~~

~~5. Diligent Operations: the continuation of drilling or reworking operations in the secondary term of the lease which are prosecuted in a timely and good and workmanlike manner to establish production or restore production of leased substances. Diligent Operations may include cessations of operations which do not exceed ninety (90) days in duration or a cumulative period in~~

excess of one hundred eighty (180) days in a lease year without prior agency approval.

6. Effective Date: the date as defined in the lease.

7. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

8. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending at midnight on the last day of the twelfth month.

9. Minimum Royalty: the minimum amount of money payable to the agency which accrues beginning in the first year of the secondary term of the lease or after first production is obtained. The amount due is calculated on the difference, if any, between the amount of the minimum royalty specified in the lease and the actual royalty paid from production in the lease year.

10. Operating Rights Interest: the interest or contractual obligation created out of a lease that authorizes the operating rights interest owner to enter upon the leased land to conduct drilling, production and other related operations. Operating rights interest may be stratigraphically limited.

11. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with Section 53C-2-401-(1)(d)(ii) and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for joint ventures, farmout agreements, exploration agreements, or other agreements for the disposition of hydrocarbon deposits on trust lands.

12. Paying Quantities: unless otherwise defined in the lease, production that allows the lessee to realize a profit after deducting taxes, the agency's royalty, and the cost of the operations.

13. Record Title Interest: the primary ownership of a lease that includes the obligation to pay rentals, the rights to assign or relinquish a lease, and the ultimate responsibility to the agency for obligations under the lease. Record title interest to a lease may not be stratigraphically limited.

14. Rental: a sum of money as prescribed in the lease payable annually in advance to the agency on or before midnight on the last day of the lease year.

15. Shut-in Gas Well: a gas well that is physically capable of producing gas in paying quantities that cannot be marketed at a reasonable price due to lack of market or transportation facilities, the status of which has been confirmed through the filing of a completion report or other documentation with UDOGM.

16. Shut-in Gas Well Payment: beginning at the commencement of the secondary term of the lease, the amount of money accruing and payable to the agency, in addition to other obligations defined in the lease, when gas is not being sold or marketed from the lease for a shut-in gas well.

17. Spud: the first boring of a hole in the drilling of a well and continuation of operations until surface casing is set.

18. UDOGM: the Division of Oil, Gas, and Mining of the Department of Natural Resources of the State of Utah.

#### **R850-21-200. Classification of Oil, Gas and Hydrocarbons.**

Oil, gas and hydrocarbon leases may cover oil; natural gas, including gas producible from coal formations or associated with coal-bearing formations; natural gas liquids; other

hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form); sulfur; helium; and other gases not individually described. The oil, gas and hydrocarbon category shall not include coal, oil shale, asphaltic-bituminous sands or gilsonite.

#### **R850-21-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified applicants as set forth in R850-3-200 for the development of oil, gas and hydrocarbon resources.

##### 2. Competitive Leasing.

The director may designate lands for bidding by electronic means as a vehicle for competitive leasing. Electronic bidding may be in addition to, or in place of, the bidding processes set out at Section 53C-2-407 at the discretion of the director. A list of available land and a link to the bidding form and procedure will be provided at the agency website.

(a) Competitive Bid Offering: when the agency designates lands for competitive bidding, it shall award leases on the basis of the highest bonus bid per acre made by a responsible, qualified bidder.

(b) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leases shall not be less than \$1.00 per acre or fractional acre thereof, as set by the director.

(c) Notice of Offering: notices of the offering of lands for competitive bid shall:

(i) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office or online;

(ii) provide the legal description of the land;

(iii) state the last day on which bids may be received.

(d) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(e) Awarding of Leases: the winning bid shall be disclosed in the agency's office at 10 a.m. on the first business day following the last day on which bids may be received.

##### 3. Non-Competitive Leasing.

(i) the director may designate lands for non-competitive leasing if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date the competitive sale closed for which no bids were received. The procedure for non-competitive leasing will be posted on the agency website.

(ii) where two or more applications for the same lease contain identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

##### 4. Other Business Arrangement.

(i) the agency may, with board approval, enter into joint ventures, farmout agreements, exploration agreements, or other agreements for the development of oil, gas and hydrocarbon resources if the agency deems it is in the best interest of the trust to do so.

(ii) The application for an OBA must be written and directed to the Assistant Director for Oil and Gas for review on a case-by-case basis.

**R850-21-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the land the agency owns is less than the whole of a quarter-quarter section or surveyed lot, in which case the lease will be issued only on the entire area owned by the agency.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range, unless a waiver is approved by the director.

**R850-21-500. Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

**1. Rentals and Credits.**

(a) The rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year, at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than \$500.00.

(c) Rental payments must be received on or before the end of the lease year notwithstanding R850-5-200(3), unless otherwise stated in the lease.

(d) Any overpayment may, at the option of the agency, be credited toward the lease account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

**2. Continuance of a Lease After Expiration of the Primary Term.**

Unless otherwise provided in the lease, a lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(b) the agency determines that the lessee or designated operator is engaged in diligent operations which are determined by the director to be reasonably calculated to restore production of the leased substance from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(c) subject to the requirements of R850-21-500(4), if the leased trust lands, or lands pooled therewith, contain a shut in gas well capable of producing paying quantities and lessee makes all payments required by the lease.

**3. Pooling, Communitization or Unitization of Leases.**

(a) Upon prior written authorization of the director, lessee may commit the leased trust lands or portions of such lands to units, or cooperative or other plans of development under such conditions as the director may prescribe.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, or cooperative or other plan of development.

(c) Production allocated to the leased trust lands under the terms of a unit, or cooperative or other plan of development

shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) Lease payments for leases included in any unit, cooperative or other plans of development shall be at the rate specified in the lease, subject to change at the discretion of the director or as may be prescribed in the terms of the lease.

(e) For active leases in a validated federal or state unit as of the effective date of these Rules that are either contracted out of such unit or upon unit termination which occurs before January 1, 2021, the agency will:

(i) grant a one-time, two (2) year extension from the date the lease was eliminated from the unit either by contraction or unit termination and so long thereafter as the leased substances are produced in paying quantities, or

(ii) continue the lease to the end of its primary term, whichever is longer.

**4. Shut-in Gas Wells Producing Gas in Paying Quantities.**

(a) To qualify as a shut-in gas well capable of producing in paying quantities:

(i) if the well is a new well, the operator must have filed with UDOGM a completion form or other documentation verifying that the well is capable of production in paying quantities, and if the well is an existing well, the operator must have obtained an approval of shut-in status from UDOGM; and

(ii) the lessee shall have complied with the lease terms providing the basis upon which the minimum royalty is to be paid for a shut-in gas well.

(b) The director may, at any time, require written justification from the lessee that the well qualifies as a shut-in gas well.

(c) A shut-in gas well will not extend a lease more than five (5) years beyond the original primary term of the lease unless otherwise extended at the discretion of the director.

**5. Oil/Condensate/Gas/Natural Gas Liquids Reporting and Records Retention.**

(a) Notwithstanding the terms of the lease, gas and natural gas liquid report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGLs does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production.

(c) Records of production, sales, transportation, and all other documents pertaining to the calculation of royalties shall be maintained for seven (7) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

**6. Other Lease Provisions.**

(a) Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term, covenant or any applicable law or agency rule. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to R850-8-1000, in accordance with the provisions of the rules of the agency.

(b) When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form, the amended lease will retain the effective date of the original lease.

(c) The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary but which do not substantially impair the lessee's rights under the lease.

#### **R850-21-600. Transfer by Assignment or Operation of Law.**

1. Record Title or Operating Rights Transfer by Assignment. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however that:

(a) record title or operating rights assignments must be approved by the director. No record title or operating rights assignment is effective until approval is given.

(b) Any attempted or purported assignment of record title or operating rights made without approval by the director is void.

2. Non-leasehold assignments. Non-leasehold assignments of overriding royalty interests must be filed with the agency for record keeping purposes only. Other non-leasehold interest assignments may be filed with the agency for record keeping purposes only.

#### 3. Requirements for Assignments.

(a) An assignment of either a record title or operating rights interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(F) interest retained, if any; and

(G) a certification of net revenue interest, if applicable.

(b) Lessees who are assigning a record title or operating rights interest shall:

(i) prepare and fully execute the assignments, complete with acknowledgments;

(ii) require that all assignees execute the acceptance of assignment; and

(iii) submit the prescribed assignment fee.

(c) If approval of any assignment of record title or operating rights is withheld by the director, the assignee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

(d) An assignment shall be effective following approval by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if the assignment had not been executed until approval by the director. After approval by the director, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(e) An assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(f) Any assignment of record title or operating rights affecting leases issued beginning April 1, 2005, which would create a cumulative royalty and other non-working interest burdens in excess of twenty percent (20%) thereby reducing the net revenue interest in the lease to less than eighty percent (80%) net revenue interest shall not be approved by the agency. The agency reserves the right to void any assignment in which the certification of net revenue interest is found to be false and the assignment results in an aggregate burden in excess of 20% including the agency's retained royalty.

(g) Mass assignments are allowed, provided the requirements set forth in R850-21-600(2) are met.

(h) To the extent a legal foreclosure upon interests in leases occurs under the terms of a mortgage, deed of trust or other agreement, assignments must be prepared as set forth in this section and filed with and approved by the agency.

(i) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties. Agency approval does not estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

#### 4. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs or devisees of the estate, as appropriate, upon filing of:

(i) a certified copy of the death certificate, together with other appropriate documentation to verify change of ownership as required under Section 75-1-101 et seq., such as a court order determining intestate heirs or letters testamentary and a deed by the personal representative of the estate;

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) a required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond conditioned to cover the obligations

of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

**R850-21-700. Plan of Operations and Reclamation.**

1. Prior to conducting any operations that may disturb the surface of lands contained in a lease, the lessee or designated operator shall submit for approval simultaneously to the agency and to UDOGM, a plan of operations and must receive the approval of the plan by both agencies. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. The agency will review any request for drilling operations and will grant approval provided that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the plan of operations for oil, gas or hydrocarbon resources is required prior to approval by UDOGM, unless otherwise waived in writing to UDOGM by the agency.

2. Prior to approval of the plan of operations, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological or biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies; and

(b) when requested, provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease; and

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or other agreement for trust lands other than the leased lands where the use of said lands is necessary for the development of the lease.

3. During drilling operations, lessee or designated operator shall keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease and will deposit any geological data related to exploration drill holes with the agency upon request.

4. Oil and gas drilling, or other operations which disturb the surface of the leased lands shall require surface rehabilitation of the disturbed area as prescribed and as required by the rules and regulations administered by the agency and UDOGM.

All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the disturbed area shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless

consent of the agency to do otherwise is obtained. At the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM. All mud pits shall be filled and materials and debris removed from the site.

All topsoil in the affected area shall be removed, stockpiled, and stabilized on the leased trust lands until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency.

5. All lessees or designated operators shall be responsible for compliance with all laws, notification requirements, and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of other agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

**R850-21-800. Bonding.**

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq or any successor rule.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah. Surety company must maintain an A credit rating. Lessee or designated operator has thirty (30) days to cure a devalued rating, or lessee or designated operator will not be allowed to continue to work on the leased trust lands until a new surety bond has been filed and accepted by the agency:

(ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the

agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(D) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(E) any other type of surety approved by the agency.

#### 2. Bond Amounts.

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of \$15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than \$5,000.

#### 3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond will be denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the amount of the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond that meets the requirements of this section is on file with another agency.

#### **R850-21-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Lessee shall give written notice to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit to the agency in advance written notice of any activities to occur within the multiple mineral development area and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the

lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Section 53C-2-405(4).

**KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations**

**Date of Enactment or Last Substantive Amendment: [July 23, 2012]2019**

**Notice of Continuation: April 1, 2015**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2 et seq.**

## Transportation, Preconstruction R930-6 Access Management

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43602

FILED: 03/26/2019

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule contains elements primarily affecting the Utah Department of Transportation's (UDOT) Statewide

Access Management Program. It also contains some elements affecting UDOT's Statewide Utility and Encroachment Permitting Program. The principal objectives of this update are to achieve the following beneficial outcomes: 1. INCREASE PROGRAM TRANSPARENCY: more fairly (and accurately) reflects real-world operational practices. 2. IMPROVE QUALITY AND SAFETY: strengthens post-permit compliance activities; outlines a clear corrective action process for non-compliance; establishes uniform process addressing non-permitted activities; and addresses recurring inequalities associated with Limited-Access appraisals. 3. MAXIMIZE PERFORMANCE AND THROUGHPUT CAPACITY: requires reciprocal applicant engagement efforts (applicant may be removed from application process after 30-days of non-response); and encourages "Full-Kit" application submittal (aligns with proven Theory of constraints-based best practice models). 4. REDUCE ADMINISTRATIVE BURDENS: doubles UDOT's post-permit extension ability (expands permit extension range from 6 to 12 months); and eliminates new permit requirement for vacant single-family dwellings. 5. ADD MORE DISCRETIONARY AUTHORITY: allows additional flexibility for waiving Traffic Impact Studies -Broadens the scope of variances to allow additional qualifying scenarios. 6. REDUCE LITIGATION RISK: fosters greater statewide consistency; removes obsolete and conflicting language; helps demystify programmatic intent; and aligns with UDOT's Vision, Mission, and Strategic Goals.

**SUMMARY OF THE RULE OR CHANGE:** The proposed changes to this rule: increase transparency; improve quality and safety; maximize performance, capacity, and efficacy of the permit processes; requires reciprocal applicant engagement efforts (applicant may be removed from application process after 30-days of non-response); encourage "Full-Kit" application submissions to reduce administrative burdens; eliminates new permit requirement for vacant single-family dwellings; allows UDOT more discretionary authority; reduces the UDOT's litigation risk by fostering greater statewide consistency; removes obsolete and conflicting language, better aligns with UDOT's vision, mission, and strategic goals; and restructure the rule's enforcement provisions.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-1701 and Section 41-6a-216 and Section 72-1-201 and Section 72-3-109 and Section 72-4-102.5 and Section 72-6-117 and Section 72-7-102 and Section 72-7-103 and Section 72-7-104 and Section 72-7-105 and Section 72-7-503 and Subsection 72-1-102(11)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** UDOT anticipates these proposed rule changes will have an affect on the state's budget. These proposed changes streamline permitting processes and provide the UDOT greater flexibility in enforcement of this rule. This should lead to greater efficiency and throughput capacity, which will lead to lower costs or a lower cost growth rate.

◆ **LOCAL GOVERNMENTS:** UDOT does not anticipate these proposed rule changes will have a measurable impact on local governments because it does not require anything from, or provide anything to, local governments that may result in a fiscal impact.

◆ **SMALL BUSINESSES:** UDOT believes these proposed amendments may lead to compliance costs for small businesses. All businesses, big and small, must comply with fee and other requirements of conditional access permits addressed by this rule. Businesses that violate the conditions may face direct and indirect financial penalties for non-compliance. However, it is impossible to estimate what such compliance costs or penalties might be with any accuracy at present.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** UDOT believes these proposed amendments may lead to compliance costs for persons other than businesses and local governments if the entity installing a utility facility on UDOT's right of way is able, and determines to pass all or a portion of the compliance costs it incurs to such other persons. However, it is impossible to estimate what such compliance costs might be with any accuracy at present.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The revamped Permits Violations Enforcement subsection of this rule will lead to compliance costs for persons who violate that subsection's terms. This new subsection includes a progressive corrective action model to comprehensively address permit-related noncompliance issues. It also encompasses appeal-related matters. The updated language articulates the framework and process within which the UDOT's inspection forces will set about consistently documenting any identified permit-related violations. It demystifies how UDOT will respond to permit-related violations, and what UDOT will do to effectively intervene when warranted. However, it is not possible to accurately estimate what these costs may be because they depend on the violations committed and numerous other variables.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This set of proposed rule changes will not have a fiscal impact on businesses generally.

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

TRANSPORTATION  
PRECONSTRUCTION  
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)



- ◆ Josh Dangel by phone at 269-217-7091, or by Internet E-mail at jdangel@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Carlos Braceras, Executive Director

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
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>	<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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Small and Non-Small Businesses**

1) The Department estimates that the utilities, telecommunications, and real estate development, construction, and sand and gravel mining industries in Utah may experience a material fiscal impact resulting from enactment of this proposed amendment. This fiscal impact may be positive or negative, depending upon the specific facility, permit sought, or right of way impacted, or permit violation committed, and how we define fiscal impact.

a) The utilities industry is comprised of establishments involved in:  
 i) Electric power generation, transmission, and distribution, NAICS of 221112 for generation, and 221122 for distribution;

ii) Natural gas distribution, NAICS of 221210; and  
 iii) Water distribution and irrigation systems, NAICS 221310, Sewer systems, NAICS 221320.

b) The telecommunications industry is comprised of establishments involved in:

i) Wired Telecommunications Carriers NAICS of 517311; and  
 ii) Wireless Telecommunications Carriers (except Satellite), NAICS of 517312.

c) Real estate development and construction industries is comprised of establishments involved in:

i) Residential Building Construction, NAICS of 236118;  
 ii) Nonresidential Building Construction, NAICS of 236210, 236220;

iii) Utility System Construction, NAICS of 237110, 237120, 237130;

iv) Land Subdivision, NAICS of 237210;

v) Highway, Street, and Bridge Construction, NAICS of 237310;

vi) Other Heavy Construction, NAICS of 237990; and  
 (vi) Sand and Gravel Mining, NAICS of 212321.

2) The Department of Workforce Services (DWS) Firm Find Data includes information about firms within the seventeen industries identified by the NAICS industry code, which data on numbers of employees by firm follows:

a) Electric power generation, transmission, and distribution, NAICS of 221112 for generation, lists 16 firms total, 11 are small businesses; and 221122 for distribution; lists 57 firms total, 52 are small businesses;

b) Natural gas distribution, NAICS of 221210, lists 46 firms total, 40 are small businesses;

c) Water distribution and irrigation systems, NAICS 221310, lists 182 firms total, 177 are small businesses;

d) Sewer systems, NAICS 221320, lists 48 firms total, 46 are small businesses;

e) Wired Telecommunications Carriers NAICS of 517311, lists 150 firms total, 135 are small businesses; and

f) Wireless Telecommunications Carriers (except Satellite), NAICS of 517312, lists 56 firms, 55 are small businesses.

g) Residential Building Construction, NAICS of 236118, lists 2592 firms, 19 are large, 2573 are small businesses.

h) Nonresidential Building Construction, NAICS of 236210, 236220, lists 631 firms, 32 large, and 599 small businesses.

i) Utility System Construction, NAICS of 237110, 237120, and 237130, 279 firms, 22 large, 257 small businesses.

j) Land Subdivision, NAICS of 237210, 136 firms, 1 large 135 small businesses.

k) Highway, Street, and Bridge Construction, NAICS of 237310, 172 firms, 19 large, 153 small businesses.

l) Other Heavy Construction, NAICS of 237990, 68 firms, 1 large, 67 small businesses.

m) Sand and Gravel Mining, NAICS of 212321, 35 firms, 6 large, 29 small businesses.

3) Of these 4468 firms in the seventeen possibly affected industry groups, 139 are non-small or large businesses and 4329 are small businesses, as defined by Utah Code Section 63G-3-102(19). For a complete list of these firms, contact the Department.

4) The Department does not believe this proposed amendment will lead to any compliance costs for local governments unless the local government in question is bearing the costs of installing a utility facility in UDOT right of way. However, because the cost of the impact a local government may incur in such instances will vary based on geographic location and attendant variables it is not

possible to estimate what the compliance costs will be with any degree of accuracy at present.

5) The Department believes this proposed amendment may lead to compliance costs for small businesses. All businesses, big and small, must comply with fee and other requirements of conditional access permits addressed by this rule. Businesses that violate the conditions may face direct and indirect financial penalties for non-compliance. However, it is impossible to estimate what such compliance costs or penalties might be with any accuracy at present.

6) The Department believes this proposed amendment may lead to compliance costs for persons other than businesses and local governments if the entity installing a utility facility on UDOT's right of way is able and determines to pass all or a portion of the compliance costs it incurs to such other persons. However, it is impossible to estimate what such compliance costs might be with any accuracy at present.

7) The Department estimates that its budget will likely experience a fiscal impact related to this proposed amendment. The Department is proposing this amendment to increase program transparency, improve quality and safety, maximize performance and throughput capacity, reduce administrative burdens on affected persons, add more discretionary authority and flexibility, and reduce litigation risk. These proposed changes streamline permitting processes and provide the Department greater flexibility in enforcement of the rule. The Department expects the proposed changes will lead to greater efficiency and increases in throughput capacity, which will lead to lower costs or a lower cost growth rate. It is not possible to estimate what this impact will be with any degree of accuracy at present.

8) Carlos Braceras, executive director of the Department has reviewed and approved this fiscal analysis.

### **R930. Transportation, Preconstruction.**

#### **R930-6. Access Management.**

##### **R930-6-1. Purpose.**

(1) The purpose of this rule is to:

- (a) maximize public safety;
- (b) provide for efficient highway operations and maintenance of roadways;~~and~~
- (c) utilize the full potential of the highway investment.

(2) This rule serves to establish highway access management procedures and standards to protect Utah's state highway system. The state highway system constitutes a valuable resource and a major public investment. The Utah Department of Transportation (Department) has an obligation and a public-trust responsibility to preserve and maintain the state highway system, protect the public investment in this system, and to ensure the continued use of state highways in meeting state, regional, and local transportation needs and interests. This rule also serves to establish a procedure for allowing and establishing new or existing highways as limited-access facilities, for the elimination of intersections and for the right to access restricted facilities.

(3) The primary function of a state highway is to provide system continuity and efficiency of state highway system operation and maintenance activities. Utah Code Section 72-4-102.5. A state highway may provide access to property as a secondary function. The primary function of city and county roads is to provide access to property. Owners of property adjoining a state highway have certain rights of access unless such access has been restricted by purchase or by legal action. The Department recognizes that property owners have the right of reasonable access to their property. This rule establishes standards that balance the need for reasonable access to properties with the need to preserve the smooth flow of traffic on the state highway system in terms of safety, capacity, and speed.

(4) Failure to manage access to and from state highways can cause an increase in accidents, increased traffic congestion, decline in operating speed, loss of traffic carrying capacity, and increased traffic delays. This failure results in reduced traffic mobility, increased congestion, transportation costs and delays, and contributes to higher rates of property damage, personal injury, and fatal accidents. The proliferation of driveways, intersections, and traffic signals without regard to their proper design, location, and spacing degrades highway operation and performance and poses traffic hazards for the traveling public.

(5) It is a goal of the Department to improve public safety in the development, design, and operation of the state highway system. In exercising this public safety duty, the Department enacts this rule to limit the number of conflict points at driveway locations, separate highway conflict areas, reduce the interference of through-traffic, and adequately space at-grade signalized and unsignalized intersections. The Department works closely with property owners and local authorities to provide reasonable access to the state highway system that is safe~~;~~ and enhances the movement of traffic. The Department shall utilize all of the state highway right-of-way to the best advantage for highway purposes through a permit process that assesses~~and grants~~ the number, location, width, and design of connecting streets and driveways.

(6) This rule provides guidance to Department Permit Officers, local authorities, ~~landowners~~~~land owners~~, or developers for when a conditional access permit~~grant of access~~ or encroachment permit is required, how to apply for a permit, what standards or guidelines are considered in the issuance~~granting~~ of a~~n~~ conditional access permit and encroachment permits, and what to do when a variance is sought to deviate from the standards and requirements of this rule.

##### **R930-6-2. Authority.**

(1) This rule is authorized by the following sections of the Utah Code.

- (a) Section 41-6a-216. Removal of plants or other obstructions impairing view - Notice to owner - Penalty.
- (b) Section 41-6a-1701. Backing - When permissible.
- (c) Subsection 72-1-102(11). "Limited-access facility" defined.
- (d) Section 72-1-201. Creation of Department of Transportation - Functions, powers, duties, rights, and responsibilities.
- (e) Section 72-3-109. Division of responsibility with respect to state highways in cities and towns.
- (f) Section 72-4-102.5. Definitions - Rulemaking - Criteria for state highways.
- (g) Section 72-6-117. Limited-access facilities and service roads - Access - Right-of-way acquisition - Grade separation - Written permission required.
- (h) Section 72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law - Permit and fee requirements - Rulemaking - Penalty for violation.
  - (i) Section 72-7-103. Limitation on access authority.
  - (j) Section 72-7-104. Installations constructed in violation of rules - Rights of highway authorities to remove or require removal.
  - (k) Section 72-7-105. Obstructing traffic on sidewalks or highways prohibited.
  - (l) Section 72-7-503. Advertising - Permit required - Penalty for violation.

**R930-6-3. Scope.**

(1) This rule supersedes the following publications:

(a) "Regulations for the Accommodation of Utilities on Federal Aid and Non Federal Aid Highway Rights-of-way" - 1970.

(b) "Regulations for the Control and Protection of State Highway Rights-of-way" - 1982, and previous editions of this rule, "Accommodation of Utilities and the Control and Protection of State Highway Rights of Way" - 2006 and 2013.

(2) Utility accommodation in state highway right-of-way is governed by Rule 930-7.

(3) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

**R930-6-4. Application.**

(1) This rule applies to all state highways within the Department's jurisdiction.

(2) The Department may issue a conditional access permit~~[grant of access]~~ and encroachment permit[s] only when the application is found by the Department to be in compliance with this rule. The Department is authorized to impose terms, conditions and limitations as necessary and convenient to meet the requirements of this rule. In no event shall a conditional access permit~~[grant of access]~~ or encroachment permit be issued or authorized if it is detrimental to the public health, welfare, and safety.

(3) This rule requires that installation or modification of access facilities to the state highway system be made by permit from the Department. This rule provides a description of information to be contained in the conditional access permit~~[grant of access]~~ and encroachment permit application, the standards against which the application shall be measured, and the administrative relief offered by the Department to review the balance of private property rights of reasonable access versus the public need to preserve the smooth flow of traffic on the state highway system. The standards, procedures, and requirements of this rule are in addition to other county or municipal land use regulation authority and apply to conditional access permit~~[grant of access]~~ approvals on the state highway system. Local authorities may adopt similar policies or procedures for application of access management on other street systems.

(4) If any part or parts of this rule are held to be unlawful, such unlawfulness may not affect the validity of the remaining parts of this rule. Nothing in this rule shall be construed to disqualify the Department from receiving federal participation on any federal-aid highway project.

**R930-6-5. Definitions.**

(1) "AADT" means the Annual Average Daily Traffic, the average 24-hour traffic volume at a given location over a full 365-day year, divided by 365.

(2) "AASHTO" means the American Association of State Highway and Transportation Officials.

(3) "ADT" means the Average Daily Traffic, the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period. The Department may, at its own discretion, define the appropriate time period (including days of the week) to be considered when measuring or calculating ADT.

(4) "Acceleration lane" means a speed-change lane, including tapered areas, for the purpose of enabling a vehicle entering

a roadway to increase its speed to a rate at which it can more safely merge with through traffic.

(5) "Access" or "access connection" means any driveway or other point of entry or exit such as a street, road, or highway that connects to the general street system. Where two public roadways intersect, the secondary roadway is considered the access.

(6) "Access approval" see "conditional access permit~~[grant of access]~~."

(7) "Access category" is a classification assigned to a segment of highway that determines the degree to which access to a state highway is managed. It is also referred to as "category."

(8) "Access control" see "controlled access highway."

(9) "Access corridor control plan" specifies the limitation or management of driveways, streets or other access points which balance the need for reasonable access to land development with the smooth and efficient flow of traffic defined by safety, capacity, and travel speed. Also referred to as a "corridor agreement."

(10) "Access management plan" means a roadway design plan that designates access locations and their design for the purpose of bringing those portions of roadway included in the access management plan into conformance with their access category to the extent feasible.

~~[(11)]~~ "Access opening" means a vehicular access point through or across a limited access or no-access line.

~~[(12)]~~(11) "Access operation" refers to the utilization of an access for its intended purpose and includes all consequences or characteristics of that process including access volumes, types of access traffic, access safety, time of the access activity, and the effect of such access on the state highway system.

~~[(13)]~~(12) "Access spacing" means the distance measured from the inside point of curvature of the radius of an intersection or driveway to the inside point of curvature of the adjacent intersection or driveway radius. In the case of a flared curb driveway, the distance is measured from or to the inside driveway edge.

~~[(14)]~~(13) "Access width" means the width of the traveled portion of the access as it extends away from the main highway. Access width measures only the travel portion of the access; it excludes auxiliary or turn lanes, transitions, radii, flares, and curb and gutter.

~~[(15)]~~(14) "Agricultural access" means an access to undeveloped or agricultural property.

~~[(16)]~~(15) "Applicant" means any person, corporation, entity, designee or agency applying for a permit. As used within this rule, applicant also refers to the property or project subject to a conditional access permit~~[a grant of access]~~ or encroachment permit application.

~~[(17)]~~(16) "Application fees" means the latest application fees established by the Department and approved by the legislature. Application fees are non-refundable and are designed to offset access management application review costs.

~~[(18)]~~(17) "Arterial highway" is a general term denoting a highway primarily for through traffic, usually on a continuous route.

~~[(19)]~~(18) "Auxiliary lane" refers to the portion of the roadway adjoining the traveled way for speed change, turning, storage for turning, weaving, truck climbing, and other purposes supplementary to through traffic movement.

~~[(20)]~~(19) "Bandwidth" means the time in seconds or the percent of traffic signal cycle between a pair of parallel speed lines on a time-space diagram that delineate a progressive movement. It is a quantitative measurement of the through traffic capacity of a signal

progression system. The greater the bandwidth the higher the roadway capacity.

~~[(21)]~~(20) "Capacity" means the maximum rate at which persons or vehicles can reasonably be expected to traverse a point or uniform section of a lane or a roadway during a given time period under prevailing roadway and traffic conditions. Capacity may refer to the entire roadway, a single lane, or an intersection. Measures of capacity may include, but are not limited to, traffic volumes, speed, throughput and density.

~~[(22)]~~(21) "Channelizing island" means a defined area between traffic lanes for control of vehicle movements.

~~[(23)]~~(22) "Clear roadside policy" refers to the policy employed by the Department to increase safety, improve traffic operations and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as wide, flat and rounded as practical and as free as practical from physical obstructions above the ground, within the clear zone as defined in the AASHTO Roadside Design Guide and the Department's current standards and specifications, including Standard Drawing DD-17.

~~[(24)]~~(23) "Clear zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry as referenced in the AASHTO Roadside Design Guide.

(24) "Conditional access permit" is the document that specifies requirements and conditions under which a driveway or other access point is approved, also referred to as an access approval. Unless specified, references to conditional access permits may also refer to temporary conditional access permits.

(25) "Control of access" means the condition where the right of owners of abutting land or any other persons having access to highway right-of-way is controlled by the appropriate public authority.

(26) "Controlled access highway" means a street or highway to which owners or occupants of abutting lands and other people have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway. See also "limited-access line" and "no-access line."

(27) "Contiguous property" means a parcel of land that has two or more adjoining properties abutting highway rights-of-way.

(28) "Corridor agreement" refers to a multi-agency cooperative agreement for managing the development, operations, and maintenance of a highway corridor or segment of highway corridor. In this rule, corridor agreements refer to agreements between the Department and one or multiple Local Authorities and are based on signal control plans and access corridor control plans agreed on and approved by the Department and local authorities.

(29) "County roads" are all roads that are or may be established as a part of a county system of roads.

(30) "Deceleration lane" is a speed-change lane, including tapered areas, enabling a vehicle to leave the mainstream of faster moving traffic and to slow to a safe turning speed prior to exiting the highway.

(31) "Department" or "UDOT" mean[s] the Utah Department of Transportation. Where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, Department or "UDOT" mean[s] an authorized representative of the Utah Department of Transportation.

(32) "Department Region permitting office" refers to the permitting office of the Utah Department of Transportation regional offices.

(33) "DVH" means the design hour volume, an hourly traffic volume determined for use in the geometric design of highways. It is by definition the 30th highest hour vehicular volume experienced in a one-year period. The Department shall determine the appropriate DVH conditions. In most cases the Department will require the use of the peak hour volume as the DVH, typically in a range of 8-12 percent of AADT if actual volume data are not available. For rural areas and recreational routes, the Department will typically require the use of the 30th highest hour for DVH.

(34) "Design speed" means the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern as referenced in the most recent addition of the AASHTO "A Policy on Geometric Design of Highways and Streets."

(35) "Divided highway" means a highway with separated traveled ways for traffic in opposite directions, such separation being indicated by depressed dividing strips, raised curbing, traffic islands, or other physical barriers so constructed as to discourage crossover vehicular traffic.

(36) "Driveway" refers to an access constructed within the public highway right-of-way, connecting the public highway with the adjacent property. Driveway to highway connection designs may include, but are not limited to, curb cuts and radius curb returns.

(37) "Driveway angle" means the angle of the driveway alignment relative to the highway alignment. The driveway angle refers to the alignment of a driveway near and at the connection with the highway. The driveway angle is measured between the alignment of the driveway and the alignment of the highway traveled way.

(38) "Driveway spacing" means the distance between adjacent driveways on the side of the roadway as measured from near edge to near edge, considered necessary for the safe ingress and egress of vehicles and the safe operation of the highway at its posted speed.

(39) "Easement" is an interest in real property that conveys use, but not ownership, of a portion of an owner's property.

(40) "Encroachment" is the use of highway right-of-way.

(41) "Encroachment permit" is a document that specifies the requirements and conditions for performing work on the highway right-of-way.

(42) "Expressway" is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at major intersections.

(43) "Federal-aid highway" is a highway eligible to receive Federal aid.

(44) "FHWA" means the Federal Highway Administration.

(45) "Freeway" is an expressway with full control of access.

(46) "Freeway one-way frontage road" is a one-way public street that runs parallel to a freeway and provides direct freeway access through ramps that connect the freeway main lane and frontage road.

(47) "Frontage road" is a public street or road auxiliary to and normally alongside and parallel to the main highway, constructed for the purposes of maintaining local road continuity and the controlling of direct access to the main highway.

(48) "Full access" means that ingress and egress is afforded at the point of access. It does not mean full movement.

(49) "Full movement" means that all possible vehicle turning movements are afforded at the point of access.

(50) "Functional classification" refers to a classification system that defines a public roadway according to its purposes and hierarchy in the local or statewide highway system.

(51) "General street system" is the interconnecting network of city streets, county roads, township roads, and state highways in an area.

(52) "Grade separation" is a crossing of two roadways, a roadway and a fixed guideway, a roadway and a pedestrian walkway, or bike path in such a way that neither facility interferes with the operation of the other.

(53) "Gradient or grade" means the rate or percent change in slope, either ascending or descending from or along the highway measured along the centerline of the roadway or access.

~~[(54)](54) "Grant of access" is the document that specifies requirements and conditions under which a driveway, curb cut, or other vehicular access point is granted. Also referred to as grant of access approval or access approval. Unless specified, references to grant of access refer to grants of access and temporary grants of access.~~

~~[(55)](54)~~ "Hierarchy of the roadway" refers to the functionality and the mobility flow of traffic across a system of highway facilities. The natural progression to flow from a highest order facility of high capacity and high operational speed serving major economic centers to the lowest order facility of low volume, low speed and serving multiple driveway connections.

~~[(56)](55)~~ "Highway" is a general term for denoting a public way for the transportation of people, materials, and goods, including the entire area within the right-of-way. Also referred to as road.

~~[(57)](56)~~ "Interchange" is a facility that provides ramps for access movements between intersecting roadways that are separated in grade. The ramps and any structures used to accomplish the movement of traffic between the roadways are considered part of the interchange.

~~[(58)](57)~~ "Interchange crossroad access spacing" means the distance measured between the interchange ramp gore area (point of widening on the crossroad) and the adjacent driveway or street intersection.

~~[(59)](58)~~ "Intersection" is the general area where two or more highways or streets join or cross at-grade.

~~[(60)](59)~~ "Intersection sight distance" is the distance at which a motorist attempting to enter or cross a highway is able to observe traffic in order to make a desired movement. The required distance varies with the speed of the traffic on the main highway.

~~[(61)](60)~~ "Interstate highway system" refers to the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments. It is also referred to as interstate.

~~[(62)](61)~~ "Inventory" means the listing maintained by the Department that gives the access category for each section of state highway.

~~[(63)](62)~~ "ITE" means the Institute of Transportation Engineers.

~~[(64)](63)~~ "Lane" is the portion of a roadway for the movement of a single line of vehicles. It does not include the gutter or shoulder of the roadway.

~~[(65)](64)~~ "LOS" means level of service, a qualitative measure describing a range of traffic operating conditions such as

travel speed and time, freedom to maneuver, traffic interruptions, and comfort and convenience as experienced and perceived by motorists and passengers. Six levels of service are defined from A to F, with A representing the free flow travel conditions and F representing extreme traffic congestion. LOS shall be evaluated according to the procedures and conditions defined in the most recent edition of AASHTO "A Policy on Geometric Design of Highways and Streets."

~~[(66)](65)~~ "Limited-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to limit and control access across such lines and thereby preserve the functionality, operation, safety, and capacity of the highway system. The highest priority and consideration for access category spacing standards and design apply where limited-access~~[+a]~~ lines exist. Also referred to as line of limited-access, limited-access highway, limited-access freeway or limited-access facilities (See Utah Code Section 72-1-102(11)).

~~[(67)](66)~~ "Local authority" means the governing body of counties and municipalities.

~~[(68)](67)~~ "Local road" includes any road or highway in public ownership that is not designated part of the Utah state highway system or as defined by Utah Code. It is also referred to as a "local street."

~~[(69)](68)~~ "Median" means the portion of a roadway separating the traveled ways for opposing traffic flows.

~~[(70)](69)~~ "Median island" means a curbed island that prevents egress traffic from encroaching upon the side of the drive used by ingress traffic. The island ensures that ingress traffic has the necessary maneuvering space.

~~[(71)](70)~~ "MPH" means miles per hour, a rate of speed measured in miles per hour.

~~[(72)](71)~~ "MUTCD" means the current Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

~~[(73)](72)~~ "No-access line" means a line parallel or adjacent to the state highway right-of-way purchased and held with the intent to disallow connections across such lines. No-access lines are of the highest priority and order of the state highway system and have been established to preserve and protect the functional operation of the adjacent facility. No-Access Lines are created through the purchase of access rights. The purchase of these access rights may utilize federal, state, or combination of federal and state funds. Also referred to as line of no-access or no-access facilities.

~~[(74)](73)~~ "Peak hour" means the hour of the day in which the maximum volume occurs.

~~[(75)](74)~~ "Peak hour volume" see "design hour volume."

~~[(76)](74)~~ "Permit" as referenced under this rule may include a conditional access permit~~[grant of access]~~ or encroachment permit. Permits defined under this rule do not include other written permission that may be required by local authorities for utility work in the state highway right-of-way, and other permits referenced in other applicable rules.

~~[(77)](75)~~ "Permit issuance date" means the date when the authorized Department official signs the permit electronically or by any other means.

~~[(78)](76)~~ "Permittee" means any person, unit of government, public agency, or any other entity to whom a conditional access permit~~[grant of access]~~ or encroachment permit is issued. The permittee is responsible for fulfilling all the terms, conditions and limitations of the conditional access permit~~[grant of access]~~ or encroachment permit.

~~[(79)](77)~~ "Person" means any individual, partnership, corporation, association, government entity, or public or private organization of any character other than a state agency, as noted in Section 63G-3-102(12).

~~[(80)](78)~~ "Posted speed" means the maximum speed limit for a specified section of highway.

~~[(81)](79)~~ "Public authority" means a public administrative agency or corporation authorized to administer a public facility.

~~[(82)](80)~~ "Reasonable alternate access" refers to conditions where access to the general street system from a property adjoining a state highway can be achieved by way of another alternative including but not limited to a lesser function road, internal street system, or dedicated rights-of-way or easements. For example, where a subject property adjoining a state highway also adjoins or has access to an internal street system, such access shall be considered a reasonable alternate access and any access to the state highway shall be considered an additional access.~~—Determination of reasonable alternate access shall be determined in consultation with the appropriate local authority and as prescribed in this rule.~~

~~[(83)](81)~~ "Relocate" means to remove and establish in a new place and may include, if necessary to conform a property's access to the provisions of this rule, merging or combining non-conforming access with other existing access so as to eliminate the non-conformance. In such event, the property owner or permittee, if applicable, may be required to remove all physical elements of the non-conforming access such as curb cuts and surfacing material and install curbing, barriers, or other physical separators to prevent continued use of the access.

~~[(84)](82)~~ "Right-in right-out" refers to a type of three-way road intersection where turning movements of vehicles are restricted with only right turns allowed. Also refers to intersection or driveway movements restricted to right-turn ingress and right-turn egress movements only.

~~[(85)](83)~~ "Right-of-way" is a general term denoting property or property interest, usually in a strip devoted to transportation purposes.

~~[(86)](84)~~ "Road" see "highway."

~~[(87)](85)~~ "Roadside" means the area between the outside shoulder edge and the right-of-way limits.

~~[(88)](86)~~ "Roadway" means the portion of a highway, including shoulders, for vehicular use.

~~[(89)](87)~~ "Rural" includes areas incorporated, or designated by census, with a population of less than 5,000.

~~[(90)](88)~~ "Shared access" is an access point serving more than one parcel or landowner.

~~[(91)](89)~~ "Shoulder" means the paved or unpaved portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles.

~~[(92)](90)~~ "Signal" means a traffic control signal. It is also used to refer to a signalized intersection or traffic signal.

~~[(93)](91)~~ "Signal control plan" is a comprehensive action plan for identification of signal locations along a corridor or segment of a corridor. The purpose of a signal control plan is to provide for efficiency of signal progression and corridor functionality. This is also referred to as a corridor agreement.

~~[(94)](92)~~ "Signalization" means the installation or modification of a traffic control signal.

~~[(95)](93)~~ "Signal progression" means the progressive movement of traffic at a planned rate of speed without stopping

through adjacent signalized locations along a corridor or within a traffic control system.

~~[(96)](94)~~ "Signal spacing" means the distance between signalized intersections measured from the centerline of a signalized intersection cross street to the centerline of the adjacent existing or future signalized intersection cross street. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and is thought to be one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Traffic signals that are closely or irregularly spaced bring about increases in the number of accidents, stops, delay, fuel consumption, and vehicular emissions. Long and uniform signal spacing allows for more efficient progression throughout the corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows.

~~[(97)](95)~~ "Slope" means the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

~~[(98)](96)~~ "Speed" refers to the posted legal speed limit at the access location at the time of permit approval. A higher speed for access design must be used if the section of highway is presently being redesigned or reconstructed to a higher speed or an approved access control plan requires a higher speed.

~~[(99)](97)~~ "Speed change lane" means a separate lane for the purpose of enabling a vehicle entering or leaving a roadway to increase or decrease its speed to a rate at which it can safely merge with or diverge from through traffic. Acceleration and deceleration lanes are speed change lanes.

~~[(100)](98)~~ "State highway" includes those highways designated as state highways in Utah Code Title 72, Chapter 4, Designation of State Highways Act

~~[(101)](99)~~ "Stewardship and oversight agreement" means the current agreement formalizing the roles and responsibilities of the FHWA, Utah Division and the Department in administering the Federal-Aid Highway Program. This agreement is available from the Department's website.

~~[(102)](100)~~ "Stopping sight distance" means the distance required by a driver of a vehicle traveling at a given speed to bring the vehicle to a stop after an object on the roadway becomes visible. It includes the distance traveled during driver perception and reaction times and the vehicle braking distance.

~~[(103)](101)~~ "Storage length" means the additional lane length added to a deceleration lane to store the maximum number of vehicles likely to accumulate in the lane during a peak hour period to prevent stored vehicles from interfering with the function of the deceleration lane or the through travel lanes.

~~[(104)](102)~~ "Street" is a general term for denoting a public way or private way for purpose of transporting people, materials, and goods.

~~[(105)](103)~~ "Street spacing" means the distance between intersections (signalized or unsignalized) measured as the distance between the leaving point of tangent of a street access to the receiving point of tangent of the adjacent street access.

~~[(106)](104)~~ "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. A major structure is a highway structure with a span or multiple span length of 20 feet or

more measured along the ~~centerline~~~~[center line]~~ of the roadway and a minor structure is the same as a major structure except it is less than 20 feet.

~~[(107)](105)~~ "Taper" means a transitional area of decreasing or increasing pavement width to permit the formation or elimination of an auxiliary lane.

~~[(108)](106)~~ "Traffic control equipment" means equipment, including but not limited to, traffic control signs, traffic signal poles, circuitry and appurtenant equipment.

~~[(109)](107)~~ "Temporary conditional access permit~~[grant of access]~~" is required from the Department whenever a temporary driveway or connection to a state highway is sought. A temporary conditional access permit~~[grant of access]~~ shall expire within twelve months of the permit issue date or before as specified in the terms, conditions, and limitations of the temporary conditional access permit~~[grant of access]~~. No extensions may be granted. To reestablish a temporary access, the permittee or applicant shall submit a new conditional access permit~~[grant of access]~~ application.~~[—Unless specified, references to grant of access include temporary grants of access.]~~

~~[(110)](108)~~ "TIS" means traffic impact study, a study that may be required by the Department or local authorities that addresses the impacts of a proposed development, mitigation of impacts, access usage, or land use to ensure the efficient flow of traffic.

~~[(111)](109)~~ "Traveled way" includes the portion of the roadway for the movement of vehicles.

~~[(112)](110)~~ "Urban" refers to a census designated area with a population of 5,000 or more or any portion of a designated urbanized Metropolitan Planning Organization planning boundary.

~~[(113)](111)~~ "Variance" is an authorized~~[granting of]~~ permission to depart from the standards and requirements of this rule. Variance requests are evaluated through the completion of the Department's Variance Request Form.

~~[(114)](112)~~ "Warrant" is the criteria by which the need for a treatment or improvement can be determined.

~~[(115)](113)~~ "Working day" includes any weekday in which a normal day of work can be performed exclusive of delays that result from inclement weather, labor disputes, and material shortages. It does not include weekends and legal holidays.

#### **R930-6-6. Access Control.**

(1) General.

(a) This section addresses general methods, requirements and limitations utilized to manage and control access to state highways.

(2) Access categories.

(a) Access category management system. This rule provides a system of ten highway access categories to which all sections of state highways have been or will be assigned.

(i) Each access category describes the function of the highways including the operational standards that are applied to maintain the highway's function in terms of mobility, capacity, traffic flow, and safety.

(ii) The access category is assigned based on, but not limited to, evaluation of the attributes and characteristics of whether or not the facility is a part of the National Highway System, FHWA functional classification, urban or rural designation, and posted speed.

(iii) The number, spacing, type, and location of accesses and traffic signals have a direct and often significant effect on the capacity,

speed, and safety of the highway and are therefore managed by this category system which establishes a hierarchy of the roadway for access management.

(iv) The spacing and design standards for each category are necessary to ensure the highway functions at the levels expected for its assigned access category.

(v) The access management standards of this rule have been developed for segments or classifications of highways that have similar context and functions. Access Management standards have been established to achieve safety, capacity, and traffic flow objectives for each classification.

(vi) Implementation of the statewide access management requirements of this rule ensures equitable, uniform, consistent, and systematic application of access management standards.

(b) Access category description. The following describe the function and application of the ten access categories used to manage access to state highways:

(i) Category 1: Freeway/interstate system facilities (I).

(A) Category 1 is appropriate for use on highways that have the capacity for high speed and high traffic volumes over medium and long distances.

(B) These facilities serve major interstate, intrastate, and inter-regional travel demand for through traffic. In urbanized and metropolitan areas, they may also serve high volume and ~~[high-speed]~~high-speed intra-city travel.

(C) All interstate and freeway facilities are included in this category.

(ii) Category 2: System priority-rural importance (S-R).

(A) Category 2 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 2 highways are designed and intended to achieve a posted speed of 55 mph or higher in areas without signals and 45 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in rural areas.

(D) Direct access service to adjoining land is subordinate to providing service to through traffic movements.

(iii) Category 3: System priority-urban importance (S-U).

(A) Category 3 is appropriate for use on highways that have the capacity for high speed and relatively high traffic volumes.

(B) Category 3 highways are designed and intended to achieve a posted speed of 50 mph or higher in areas without signals and 40 mph or higher in areas with signals.

(C) These facilities provide for interstate, inter-regional, intra-regional, and intercity travel needs in urban areas.

(D) Direct access service to abutting land is subordinate to providing service to through traffic movements.

(iv) Category 4: Regional-rural importance (R-R).

(A) Category 4 is appropriate for use on highways that have the capacity for moderate to high speeds (generally greater than 50 mph) and relatively high traffic volumes.

(B) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance in rural areas.

(v) Category 5: Regional priority-urban importance (R-PU).

(A) Category 5 is appropriate for use on highways that have the capacity for moderate speed (generally 45 mph or higher) and moderate to high traffic volumes.

(B) There is a balance between direct access and mobility needs within this category.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of interstate or system importance and through urban areas that have significant potential for development or redevelopment.

(vi) Category 6: Regional-urban importance (R-U).

(A) Category 6 is appropriate for use on highways that have the capacity for moderate to low speeds (generally to a speed range of 40 mph or less) and moderate to high traffic volumes.

(B) While this category provides service to through traffic movements, it allows more direct access to occur.

(C) These facilities move traffic across multiple communities or jurisdictions, typically connecting facilities of Interstate or system importance but through urban areas that are significantly developed to the point where travel speed and capacity has eroded.

(vii) Category 7: Community-rural importance (C-R).

(A) Category 7 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access. These facilities move both regional and local rural traffic but with emphasis on local movements such as those common on small city Main Streets.

(viii) Category 8: Community-urban importance (C-U).

(A) Category 8 is appropriate for use on highways that have the capacity for moderate to low speeds and moderate volumes.

(B) This category provides a balance between through traffic movements and direct access.

(C) These facilities move traffic through a single community or to an adjacent community but not generally used for long distance (greater than five miles) travel.

(ix) Category 9: Other importance (O).

(A) Category 9 is appropriate for use on frontage roads, back roads, service roads, critical connections of short distance, and other special use facilities.

(x) Category 10: Freeway one-way frontage road (F-FR).

(A) Category 10 is appropriate for use on one-way frontage road systems that provide direct access to and from freeway ramps. Specifically, this category applies to the one-way frontage roads.

(B) Freeway main lane and ramp components of the freeway/frontage road systems must meet the criteria defined for Category 1 facilities.

(c) Access category assignments. To make category assignments for specific sections of state highways, the Department may consider adopted administrative and functional classifications, National Highway System routes, designated urban areas, existing and projected traffic volumes, posted and operating speed, current and future highway capacity and levels of service, current and predicted levels of highway safety, adopted state and local transportation plans and needs, the character of lands adjoining the highway, adopted local land use plans and zoning, the availability of existing and planned vehicular access from local streets and roads other than a state highway, and other reasonable alternate access provided by municipal streets and county roads. Category assignment boundaries shall be logical and identifiable. Category assignments shall maintain highway system hierarchy and facility continuity to the extent possible.

(i) Category reviews and reassignments. External [R]requests for changes in the access category of a state highway or

sections thereof must be submitted to the Department through the appropriate local authority and metropolitan planning organization where appropriate. Such requests must include information pertaining to the factors cited in this rule for determination of category assignment and explain the need for the requested change. The explanation must also discuss how the requested change is consistent with and conforms to the purpose and standards of this rule and does not compromise the public health, safety, and welfare. A reassignment in access category may not be approved[~~granted~~] solely to accommodate eventful or planned growth of an entity, a specific access request, or to allow the permitting of access connections that would otherwise not be approved[~~permitted~~].

(A) Local authority coordination. Upon request by local authorities, the Department shall coordinate with local authorities in the review of zoning, subdivision, and other land use regulations affecting the safety and operation of state highways to ensure that future access requirements related to local land use decisions are consistent with the purposes and standards of this rule. The issuance or approval of any permit, agreement, plat, subdivision, plan, or correspondence does not abrogate or limit the regulatory powers of the Department in the protection of the public's health, safety and welfare.

(ii) Access category inventory. The Department maintains an inventory of each section of state highway listing its access category assignment. This inventory is available from the appropriate Department Region and District office or the Department's website. Mapping inventory may not be held as the sole determination for access category assignment. Field assessment by a Department Permit Officer or designee may be needed to[~~shall~~] verify the appropriate access category assignment.

(iii) Category updates. The Department may review the access category inventory once every five years, or on an as needed basis, to accommodate requests or[~~and~~] changes in the highway environment affecting the access requirements of the highway. For internally driven changes or updates, [F]the initial assignment of access categories and any subsequent revision [~~must~~]should be determined in cooperation and coordination with local authorities to ensure category assignments are compatible with preserving and maintaining the highway's intended and designed function within the state highway system and within the context of the area's transportation needs and plans.

(3) Corridor agreements.

(a) General. The Department, in cooperation with local authorities, may draft agreements for the planned and future spacing or installation of access connections based on the assigned access category for the facility. The local authorities must consider these agreements in the local zoning ordinances and any development approvals. [~~upon approval of their local development orders.~~] A corridor agreement in the form of a signal control plan or access corridor control plan may supersede an access category assignment. The following apply to all corridor agreements including signal control plans and access corridor control plans.

(i) The corridor agreement shall balance between state and local authority transportation planning objectives and preserve and support the current and future functional integrity of the highway.

(ii) The corridor agreement must be executed by [~~receive the approval of both~~] the Department and the local authority to become effective. This approval shall be in the form of a written agreement signed by the local authority and the appropriate Department Region Director.



(iii) ~~[To be considered in effect, t]~~The corridor agreement shall be noted and reflected in the local jurisdiction transportation master plan.

(iv) Where a corridor agreement is in effect, all action taken in regard to the access must be in conformance with the agreement and current design standards except by written approval of the Department and local authority.

(b) Signal control plan. The Department may, at its discretion, initiate, direct or develop a signal control plan for a designated portion of a state highway. The following requirements apply for signal control plans in addition to those described for corridor agreements.

(i) A signal control plan must provide a comprehensive action plan for identification of signal locations along a designated portion of state highway. This plan shall, to the extent practical, meet the functional characteristics and design standards of the appropriate access category and requirements of the Department's Traffic and Safety division.

(ii) The signal control plan must indicate the location of existing and future signalized intersections. The plan must identify

signal locations intended to be modified, relocated, realigned, removed, or added. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(c) Access corridor control plan. The Department or local authority may, at its discretion, initiate, direct or develop an access corridor control plan for a designated portion of a state highway. The following requirements apply to access corridor control plans in addition to those described for corridor agreements.

(i) An access corridor control plan must provide a comprehensive roadway access design plan for a designated portion of a state highway. This plan shall, to the extent feasible and given existing conditions, bring said portion of highway into conformance with its access category and its functional needs.

(ii) The access corridor control plan must indicate existing and future access locations and all access related roadway access design elements including signals to be modified, relocated, removed, or added, or to remain. The plan must reserve signalized access for state facilities and local jurisdiction routes noted in their corresponding transportation master plans.

(iii) The access corridor control plan shall include current or future accommodation for multiple transportation modes, including vehicles, bicycles, pedestrians, and public transit.

(4) Limited-access and no-access lines.

(a) Application of limited-access control lines. Limited-access control for new classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in areas of the highway being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible.

(i) Short alignments. Limited-access control may be justified for limited lengths of high volume minor arterial highways, especially on new alignments and if adjacent to a freeway interchange.

(ii) Existing urban alignments. Limited-access control in urban areas on existing alignment shall not be allowed unless approved by the Department.

(b) Application of no-access control lines. Interstate and freeway facilities shall have no-access control lines.

(c) Designation of access control lines. Determination of the final location for limited-access and no-access lines, including final access locations, shall be made by the Department. The following requirements and limitations apply:

(i) FHWA review and concurrence for access locations is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(ii) Approved~~[The]~~ access openings ~~[granted]~~ shall be accurately described in the property deed and shown on right-of-way maps and roadway construction plans as required to facilitate modifications to a limited-access or no-access control line.

(iii) After execution of the deeds, no change may be made in the access location, use, ~~[or]~~ size or additional access openings be approved~~[granted]~~ except as provided in this rule.

(iv) If a portion of a property which has no access to the highway is later sold, the Department has no obligation to grant an access to the property.

(5) Local authority highway projects.

(a) Compliance requirements. A public highway reconstruction project is not required to bring legal access into full compliance with current standards of this rule, except to the extent reasonable within the limitations and scope of the project, consistent design parameters, and available public funds.

(b) Maintenance responsibility. Vehicular use and operation of local roads where they connect to (access) a state highway is the responsibility of the local authority. The local authority shall maintain such state highway access locations in conformance with this rule to the extent feasible and within statutory and public funding limitations. The local authority may fund any necessary improvements by obtaining contributions from the primary users of the access or as off-site subdivision improvements necessary for the public safety.

(c) Consolidation and modification of access. Where multiple accesses service the same ownership, public highway reconstruction projects may combine or reduce the number of accesses or modify access size and design to meet current standards.

(d) Temporary access. Temporary access within a highway project construction zone may be permissible at the discretion of the Department. A temporary conditional access permit~~[grant of access]~~ is required for any new temporary access location that provides access to the traveled portion of the highway.

(e) Interference with public highway construction. Under no circumstances shall the construction or reconstruction of a private driveway by a private interest interfere with the completion of a public highway construction project. The private interest must coordinate work with the Department project engineer for the project.

#### **R930-6-7. Design Requirements.**

(1) General.

(a) The design requirements presented herein are intended to protect the functional integrity of state highways, maintain and preserve traffic mobility, provide efficient and necessary access, while protecting the public health, safety, and welfare. Designs for access connections to state highways must comply with Department standards and conform to the current MUTCD. A design based on engineering standards and methods that are more exact than those presented in this rule may be allowed if the design meets the purposes of this rule, does not violate standards of this rule, is based on desirable nationally accepted standards, and is determined acceptable to the Department.

Local authority standards that are more stringent than those required by this rule may be used only if determined acceptable by the Department.

(2) General criteria for authorizing conditional access permit approval~~[granting access]~~.

(a) General criteria. The Department may authorize~~[grant]~~ modified or new access that is in compliance with this rule.

(b) Reasonable alternate access. When an application is created for access to a state highway with assigned access category 4 through 9, the access may be granted if reasonable alternate access cannot be obtained from the local street or road system. If the proposed access does not meet design or spacing standards, the access shall be denied if the proposed access on the property has reasonable alternate access available to the general street system and a variance request is not approved.

(i) Reasonable alternate access from a city or county road shall be determined in consultation with the appropriate local authority and the applicant. A determination of reasonable access from a local street or road shall include consideration of the local street or road function, purpose, capacity, operational and safety conditions and opportunities to improve the local street or road.

(ii) Where a subject property adjoins or has access to a lesser function road or an internal street system or by way of dedicated rights-of-way or easements, such access will be considered a reasonable alternate access and any access to the state highway will be considered an additional access.

(iii) Direct access to the state highway may be approved if the alternative local access will create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway will not create~~[be]~~ a safety issue or operational [problem]~~[impairment]~~ to the highway.

(c) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(d) Signalized intersections. The Department shall give preference to public ways that meet or may be reasonably expected to meet signal warrants in the foreseeable future.

(e) Category 1. For highways and corresponding facilities with Category 1 designations, any new access or modification of existing access shall meet freeway/interstate design practices and Department and FHWA standards. They must also ~~[and must]~~ receive FHWA and Department approval when the Interstate Highway system is involved.

(i) All private direct access to Category 1 highways, access ramps, and structures is strictly prohibited unless specifically authorized for official temporary highway construction purposes under Department contract and must receive approval from FHWA and the Department when the [I]Interstate [H]Highway system is involved.

(ii) Public access to a Category 1 facility shall only be provided by means of interchanges properly spaced, located, and designed in accordance with Department and FHWA standards and regulations.

(iii) Any new access or modification of existing access to Category 1 facilities shall separate all opposing traffic movements by physical constraints such as grade separations and non-traversable median separators.

(iv) A new interchange or, in the determination of the Department, a significant modification to an interchange on a Category 1 facility that is part of the [I]Interstate [H]Highway [S]system requires the preparation of analyses and reports that meet current FHWA and Department requirements~~[and receive approval by FHWA]~~.

(f) Category 2 and 3. For highways with Category 2 or 3 designations, access may be allowed by means of interchanges or public street intersections. Public street access to Category 3 highways shall be signalized.

(i) The Department may allow modifications to an existing private point of access abutting a Category 2 or 3 highway including relocation of the point of access within the limits of the property, if such modification or change will benefit the operation and safety of the highway, bring the access level of the highway into greater conformance with the access category, or be in the interest of public health, safety, and welfare.

(ii) Any direct private access approved~~[granted]~~ for Category 2 or 3 highways shall be for right turns only and shall be closed when reasonable alternate access is available or based on additional criteria defined by the Department in the conditional access permit~~[grant of access]~~.

(g) Category 4 through 9. For highways with Category 4 through 9 designations, direct access may be approved~~[granted]~~ if the alternative local access would create, in the determination of the Department, a significant operational or safety problem at the alternative location and the direct access to the state highway does not create an operational or safety problem for the state highway.

(h) Category 10. For highways with Category 10 designations, direct access shall be provided only by means of public street intersections.

(i) All private direct access to Category 10 highways is strictly prohibited unless specifically authorized for official temporary highway construction or utility maintenance and operations purposes under Department contract.

(ii) Spacing between ramps and adjacent intersections shall accommodate weaving movements and storage requirements to ensure smooth and safe operations for the frontage road.

(iii) No access shall be allowed between an exit ramp and its downstream cross-street intersection or between an entrance ramp and its upstream cross-street intersection.

(iv) No access shall be approved~~[permitted]~~ within 100 feet of the intersection of freeway ramp and one-way frontage road.

(3) Access placement requirements.

(a) Spacing requirements. Table 1 summarizes the minimum required signal spacing, street spacing, driveway spacing, and interchange crossroad access spacing for corresponding state highway access categories.

TABLE 1  
State Highway Access Management Spacing Standards

Category	Minimum Signal Spacing (feet)	Minimum Street Spacing (feet)	Minimum Driveway Spacing (feet)	Minimum Crossroad to 1st Right-out Driveway (feet)	Interchange Access to 1st Inter-section (feet)	Spacing from last Right-in Right-out Driveway (feet)
1 (I)	N/A	N/A	N/A	n-a	n-a	n-a
2 (S-R)	5,280	1,000	1,000	1,320	1,320	1,320
3 (S-U)	2,640	N/A	N/A	1,320	1,320	1,320
4 (R-S)	2,640	660	500	660	1,320	500
5 (R-PU)	2,640	660	350	660	1,320	500
6 (R-U)	1,320	350	200	500	1,320	500
7 (C-R)	1,320	300	150	n-a	n-a	n-a
8 (C-U)	1,320	300	150	n-a	n-a	n-a
9 (O)	1,320	300	150	n-a	n-a	n-a
10 (F-FR)	1,320	660	N/A	n-a	n-a	n-a

"N/A" means not allowed  
"n-a" means not applicable

(i) Signal spacing. Signal spacing addresses the uniformity and frequency of signalized intersections along a highway and ~~is thought to be~~ one of the most important access management techniques. Signal spacing generally governs the performance of urban and suburban highways. Signals that are closely or irregularly spaced bring about increases in crashes, stops, delay, fuel consumption, and vehicle emissions. Long and uniform signal spacing allows for more efficient progression through a corridor and provides for the implementation of a more efficient traffic control system to accommodate variations in peak and off-peak period traffic flows. Signal spacing shall be as defined in this rule or as deemed necessary

by the Department for the safe operation, capacity, signal progression, and proper design of the signal and adjacent accesses. Preference for the spacing, timing, and operation of a signal shall be given to highways and cross streets of a higher access category or function.

(ii) Street and driveway spacing. Access connections, including streets and driveways introduce conflicts and friction into the traffic stream of the main highway. Vehicles entering and leaving the main highway often slow the through traffic. The speed differentials between turning and through vehicles increase the potential for crashes. Increasing the distance between intersections and driveways enhances traffic flow and safety by reducing the frequency of conflicts for the main highway and providing greater distances to anticipate and recover from turning maneuvers. Where feasible or required by this rule, accesses must be combined or closed to reduce frequency and increase spacing between accesses. The spacing must also be consistent with current signal progression efficiency and cause no degradation to existing operations.

(iii) Interchange crossroad access spacing. Freeway and expressway interchanges allow traffic to transition from freeways to arterial or other lower functioning roadways. Interchanges also serve as important focal points of roadside development in urban, suburban, and rural areas. Intersections that are too close to the arterial/freeway interchange ramp termini result in heavy weaving volumes, complex signal operations, frequent accidents, and recurring congestion. Access connections to interchange crossroads shall be sufficiently spaced to allow the smooth transition between the freeway or expressway and intersecting lower functioning roadways. The Department may require

applicants to conduct a weaving or speed change lane analysis given unique area conditions. The Department may require applicants to use a distance greater than defined in this rule when said analysis shows that a greater spacing is necessary to provide safe and efficient weaving maneuvers.

(A) The following elements must be considered in determining minimum interchange crossroad access spacing distances:

(I) The distance required to weave across the through travel lanes.

(II) The distance required for transition into left-turn lane(s).

(III) The distance needed to store left turns with a low likelihood of failure.

(IV) The distance from the stop line to the centerline of the intersecting road or driveway.

(B) The minimum interchange to crossroad spacing requirements of Table 1 are based on the following definitions:

(I) "To 1st right-in right-out driveway," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first right-in right-out driveway intersection.

(II) "To 1st intersection," means the distance from the interchange off-ramp gore area (point of widening on the crossroad) to the first major intersection.

(III) "From last right-in right-out driveway," means the distance from the last right-in right-out driveway intersection to the interchange on-ramp gore area (point of widening on the crossroad).

(b) Emergency access. Emergency access may be ~~approved~~granted on state highways with category 2 through 10 designations ~~and~~, where required by local safety regulations, or where the Department has determined exigent circumstances exist. Such direct emergency access may be ~~approved~~permitted only if it is not feasible to provide the emergency access to a secondary roadway. External [R]requests for [such]emergency access must include a written explanation with references to local standards from the local authority safety official. Emergency a[A]ccess may not be authorized~~granted~~ to accommodate general vehicular ingress or egress. The access shall be gated and locked.

(c) Agricultural access. Agricultural access may be ~~approved on~~granted to state highways with access to category 2 through 9 designations and where, in the determination of the Department, the property has no other reasonable alternate access. Additional agricultural access to property under the same ownership or controlling interest may be ~~approved~~granted if the necessity for such additional access due to topography or ongoing agricultural activities is demonstrated. Agricultural accesses must be kept to the minimum necessary to provide access service. Agricultural access must meet minimum access design and safety standards of this rule. A change in use of the parcel of land serviced by the agricultural access may require that the access be closed. The spacing criteria between accesses contained in this rule may be waived for agricultural access. All such agricultural accesses must meet the sight distance criteria of this rule.

(d) Access near at-grade railroad crossings. Conditional Access Permits within 250 feet of~~near~~ an at-grade railroad crossing are prohibited unless approved by the Department~~must not be located closer than 250 feet from the crossing~~. Circumstances may exist where greater spacing is required consistent with the appropriate access category spacing. See Utah Administrative Code R930-5 for more information on the process to follow to comply with Department spacing requirements.

(e) Shared access. Shared access of two or more parcels may be required where a proposed new access or the redesign of an existing access does not meet spacing standards and criteria for the appropriate access category. The access location shall serve as many properties and interests as possible to reduce the need for additional direct access to the state highway.

(f) Offset placement. Where proposed or redesigned access connections which are offset and not separated by a non-traversable median are to be considered, every effort must be made to align opposing driveways and streets.

(g) Challenging topography. Where existing topography or other existing conditions make the required access spacing intervals not feasible, the Department may consider topography, established property ownerships, unique physical limitations, unavoidable or pre-existing historical land use patterns, and physical design constraints with a reasonable attempt to achieve the required access spacing. Where there are conflicts within this rule, the more stringent requirement must be met.

~~[(h) Access to limited-access facilities. Under limited-access control, the following additional limitations shall apply. Where there are conflicts between the following limitations and other requirements of this rule, the more stringent requirement shall be met.~~

~~(i) The maximum feasible and economic access control must always be obtained.~~

~~(ii) On bypasses of cities and towns, all property access shall be prohibited except where the bypass is in a low population town with little or no business and where inadequate public crossroads for property access exists.~~

~~(iii) Other than on bypass roads, a maximum of five accesses per mile on each side of the highway may be granted. Accesses to property shall only be granted opposite to each other.~~

~~(iv) Where any property has access to another public road or roads, no access shall be given closer than 1/2 mile from the public road nor shall any two granted accesses be closer than 1/2 mile. However, where the proposed project involves reconstruction on or near an existing highway where a home, business or other property development is located and lack of direct access to a home, business or other property development would involve excessive property damage and added construction costs, access openings may be provided within the other stated limitations.]~~

(4) Access design requirements.

(a) Sight distance. Access points must be located and designed to provide adequate sight distance along the state highway and the access.

(i) Access design must meet AASHTO sight distance guidelines and Department standards.

(ii) Potentially obstructing objects, including but not limited to, advertising signs, structures, trees, and bushes must be designed, placed, and maintained to meet sight distance requirements for vehicles using the access.

(iii) Modifications to the existing highway may be required for access points with less than the required minimum sight distance. Modifications may include, but are not limited to, changes to horizontal or vertical alignments, addition of acceleration or deceleration lanes, roadway relocation, use or creation of other general street system facilities, or other modifications as required by the Department.

(b) Access width. Access width shall be designed and constructed to properly accommodate the anticipated traffic volumes, lane geometries, and vehicle characteristics of both the access and the adjoining highway.

(i) Minimum and maximum access widths (feet):

(A) Commercial or industrial land uses:

(I) Two-way direction use: 25 feet minimum to 50 feet maximum.

(II) One-way direction use: 16 feet minimum to 30 feet maximum.

(B) Residential land uses:

(I) Two-way or one-way direction use: 16 feet minimum to 30 feet maximum.

(C) Agricultural uses:

(I) Two-way or one-way direction Use: 16 feet minimum to 32 feet maximum.

(ii) One-way approaches. The Department may treat adjacent one-way approaches (one-way in, one-way out) as one access when all of the following conditions are met:

(A) The one-way approaches are divided by a non-traversable median at least four feet wide but no more than 25 feet.

(B) Signing for the access median is clear and visible.

(iii) Future public streets. Applications for an access point intended to become a future public street access must consider long-term traffic projections, modal use, and agency standards to determine appropriate access widths.

(iv) Private openings for limited-access highways. The maximum size of private access openings shall be 16 feet for residences, 32[0] feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(c) Access radii. The turning radii of an access must accommodate the turning radius of the largest vehicle using the access on a regular basis.

(i) Minimum and maximum radii ranges:

(A) Commercial, industrial, or agricultural land uses:

(I) Urban areas: 30 feet minimum to 60 feet maximum.

(II) Rural areas: 20 feet minimum to 60 feet maximum.

(B) Residential land uses:

(I) Urban areas: 10 feet minimum to 15 feet maximum.

(II) Rural areas: 20 feet minimum to 30 feet maximum.

(ii) Where possible, applicants shall reduce the access radii to improve visual and physical separation of accesses and to reduce pedestrian conflicts by reducing the total access width at the roadway edge (i.e., at the intersection). Access radii shall be no larger than required to accommodate the volume and type of vehicles using the access on a regular basis.

(iii) Curb cut style driveways are typically required where curbs are present. However, radius curb returns may be used when determined by the Department to be necessary and consistent with existing or planned conditions.

(iv) Access points intended to become a future public street access may use the design criteria of the local authority and the Department to select appropriate radii, corner and intersection design. Access designs are subject to approval by the Department.

(d) Driveway profile. Driveways must be designed to minimize slope changes to prevent dragging and must conform to Department standards, including UDOT standard drawings[~~-GW-4-series~~].

(e) Driveway vertical curves. Driveway vertical curves must be as flat as feasible and at least 20 feet long. To prevent dragging, the following driveway vertical curve designs are prohibited:

(i) A hump or dip greater than 6 inches within a wheelbase of 10 feet.

(ii) Crest vertical curves exceeding a 3-inch hump in a 10-foot chord.

(iii) Sag vertical curves exceeding a 2-inch depression in a 10-foot chord.

(iv) Rolled gutters crossed by traffic.

(f) Driveway angle. Driveway angles less than 80 degrees are prohibited. Whenever possible, driveways must provide a right (90-degree) driveway angle.

(i) Exceptions. For one-directional use driveways with a right-turn entry-only or a right-turn exit-only operation, driveway angles may not be less than 60 degrees. Whenever possible, these one-directional driveways must provide a right (90-degree) driveway angle.

(g) Access signing. Traffic control devices for accesses that serve the general public must conform to the current MUTCD. Stop or yield signs are required for all street intersections and driveways when warranted by traffic conditions.

(h) Emergency access. Emergency access features must be designed to accommodate emergency vehicle characteristics appropriate for the development or intended land use and in conformance with the Department driveway standards, including those defined in this rule. However, emergency access widths may be designed to serve one-way traffic and may be less than 16 feet wide.

(i) Emergency access surfacing must minimize its visibility while still providing sufficient strength.

(ii) Emergency access must be designed based on the standards of the local emergency services and accommodate emergency vehicles necessary to serve the site.

(iii) Emergency access must provide a suitable barrier to eliminate non-emergency use. The access must be signed for emergency services only and shall only be opened during emergencies.

(iv) The access, including but not limited to barriers and signing, shall be maintained by the permittee.

(v) Emergency access barriers shall not be placed within the state highway right-of-way.

(i) Other design elements. The Department may require other design elements or features to ensure accesses are designed and constructed in a manner that will encourage proper operations and safety. Additional design elements and features include, but are not limited to, the following:

(i) Positive barrier. The Department may require access with turn restrictions to provide positive barrier such as a non-traversable median to prevent unauthorized turns. Intersection or driveway islands that channel traffic movements may be required for turn-restricted movements when any of the following apply.

(A) No restrictive center median is in place or programmed to be constructed.

(B) When frequent violations of the turn restrictions are anticipated.

(ii) Parking and site circulation. Accesses must be designed to facilitate turning movements to and from the highway while preventing vehicle queues on the highway.

(A) Parking or storing vehicles within the state highway right-of-way is prohibited without the prior written consent of the Department. See UDOT Policy 06C-09 - Placement of Angle

Parking on State Highways for more information. Roadside businesses must provide sufficient private parking or storage space to handle their corresponding parking needs and not rely upon any parking space within the state highway right-of-way.

(B) ~~[No a]~~ Access may be ~~denied~~~~[granted]~~ for parking areas that require backing maneuvers ~~onto~~~~[within]~~ the state highway, roadway or right-of-way. Circulation for parking facilities must be arranged to restrict backing onto the state highway and allow vehicles to enter and exit the site in forward drive. This requirement does not apply to residential single unit driveways.

(C) Accesses that have or are planned to have a gate across it, must be designed so the longest vehicle using the access can clear the highway when the gate is closed. For locations with prohibitive topographical features, applicants must provide a wide shoulder for temporary standing while the gate is operated.

(D) The Department may require the review of the parking lot and circulation layout and require designs, terms, and conditions necessary to ensure the safe use of the access.

(iii) Modal considerations. Access designs must provide for the safe and convenient movement of all highway right-of-way users and modes of transportation including but not limited to pedestrians, bicyclists, transit, and the physically challenged. Sidewalks and bike lanes or paths may be required where deemed appropriate by the Department or when required by the local authority.

(iv) Storm drainage. All new or modified accesses must make provisions for site retention, detention, or accommodation of site originating surface ~~[run-off]~~~~runoff~~ such that no flow of ~~[storm water]~~~~stormwater~~ or spill shall utilize the state highway drainage system unless by prior analysis and agreement in conformity with UDOT Policy 08A-06.

(A) Applicants must construct all driveways and buffer areas to maintain a positive drainage system within the highway right-of-way and not alter the stability of the roadway sub-grade.

(B) The Department is not liable for the quality of drainage waters originating at service stations or special industrial processing plants that are directed into irrigation canals through highway drainage system. Such drainage concerns are the subject of separate agreements and permits by the developers and irrigation companies.

(v) Roadside development lighting equipment. All lighting equipment for the roadside development must be placed outside the highway right-of-way. Directing light beams toward the eyes of approaching drivers on the highway is prohibited.

(5) State highway design requirements.

(a) General. This section describes the Department requirements for highway features located within the rights-of-way of any state highway. Highway features include, but are not limited to, traffic signs and street name signs, traffic signals, traffic control equipment, highway lighting, crosswalks, curb and gutter, sidewalks, and pavements. Installation of new features within the highway right-of-way and modifications to existing highway features necessary as part of permitted work must be completed at the expense of the permittee and in accordance with plans approved by the Department. Any damage to existing highway features must be repaired or restored at the expense of the permittee and in accordance with plans approved by the Department. Any work completed within state highway right-of-way must comply with Department standards and conform to the current MUTCD.

(i) Site specific requirements. For specific sections of state highway, the Department may provide additional requirement details

for access design and construction, including but not limited to, pavement thickness and specifications, curb design and specifications, roadway fill design and compaction, testing and inspection, and other specific details.

(ii) Posted speed. A proposal for access may not presume a lower posted speed limit than currently posted or request a lower speed limit in order to accommodate the access [~~unless specifically directed in writing by the Department. Where a traffic signal will be installed as part of the access construction, the access design and the anticipated posted speed limit after signal installation may be used for the overall access design at the discretion of the Department.~~].

(b) Traffic signals. The installation of permanent traffic control devices, including but not limited to traffic signals is regulated by the MUTCD and Department guidelines and standards.

(i) Nothing in this rule is intended to require the Department to authorize a traffic signal or other permanent traffic control device.

(ii) The Department may, at its discretion, complete the installation of permanent traffic control devices. The permittee shall pay for direct costs and labor provided by the Department for the installation and relocation of all traffic control devices within public right-of-way which are directly related to the use or construction of the ~~proved~~ [permitted] access.

(iii) Signal location, timing, and operation are not intended to serve or benefit single use or private access connections. Preference to signal location, timing and operation shall be given to highways and cross streets of a higher access category or function.

(iv) New traffic signals and modifications to existing traffic signals shall be allowed only as approved by the Department. No

traffic signal may be authorized without the completion of an analysis that is sealed (stamped) by a Professional Engineer licensed in the State of Utah and meets MUTCD signal warrants and all requirements of the Department. The traffic signal analysis must consider traffic signal system operation, design, construction feasibility, and safety.

(v) For existing or proposed accesses that meet MUTCD warrants and the Department requirements for signalization, but do not meet the spacing or placement requirements of this rule, the access shall be reconstructed to conform to appropriate design criteria and eliminate or reduce the traffic movements that caused the traffic signal warrant to be met.

(vi) Where the access may warrant signalization in the future, phasing of the installation may be required.

(vii) The Department may, at its discretion in consideration of ~~approving~~ [granting] access, require design, and operational modifications, restrict one or more turning movements, or deny access.

(viii) Category 2 and 3. For state highways with Category 2 or 3 designations, signals at intersections with major cross streets or roads of equal importance may be programmed to optimize traffic on both streets equally. Cross-streets of lesser importance need not be optimized equally. Traffic signals must be programmed to allow a desirable highway bandwidth of at least 50 percent. The efficiency of the signal system must be analyzed utilizing traffic volume, capacity, and level of service calculations. The analysis must determine the optimum progression speed under both existing and proposed conditions.

(ix) Category 4, 5 and 6. For state highways with Category 4, 5, or 6 designations, where it is not feasible to meet one-half mile spacing and where signal progression analysis indicates good

progression (40 percent efficiency or better), or does not degrade the existing signal progression, a full movement intersection may be allowed. In such cases, a variance and subsequent traffic study is required. Spacing to nearby intersections must be sufficient to accommodate the future vehicle storage queues for both turning and through movements. The access location must also meet other access spacing, design, and need requirements of this rule.

(c) Surface. The permittee must appropriately surface driveways and connections between the traveled way and the service area. For accesses adjoining paved highways, the permittee must pave the access surface to the right-of-way line. Pavement materials used within the state highway right-of-way shall meet Department standards and requirements.

(i) Preservation of new pavement. The Department may not issue permits to cut or excavate on newly constructed, paved, or overlaid state highways. This preservation restriction applies for a period of two years after installation of pavement or overlay. Exceptions to preservation of new pavement restrictions shall be made only in cases of emergency, and only with the approval of the appropriate Department Region Director or designee.

(d) Median treatments. A raised median or movement channelization may be required.

(i) Nothing in this rule is intended to require the Department to authorize a left turn movement at any location.

(ii) Left turn movements may not be ~~approved~~ [permitted] if a median is already established and the proposed opening of the median does not provide, in the determination of the Department, any significant operational or safety benefits to the general public or will be counter to the purpose of the median construction and the continued function of the highway at the category assigned to it.

(iii) A median opening may not be allowed if any of the following apply:

(A) A safety or hazard situation is likely or identified.

(B) The location is within the functional area of an existing or planned interchange, signalized intersection, or major unsignalized intersection.

(iv) Category 2 and 3. For state highways with Category 2 or 3 designations, Left turn movement may be ~~approved~~ [permitted] if all of the following apply:

(A) Access does not have potential for signalization.

(B) Travel is circuitous in one direction that exceeds two miles.

(C) Left turn movement can be designed to the Department's satisfaction that meets all safety, design, and operational standards.

(v) Category 4, 5, 6, 7 and 8. The following apply for state highways with Category 4, 5, 6, 7 or 8 designations:

(A) If a restrictive median exists, left turns at unsignalized intersections shall be restricted unless the restriction of these movements will cause a safety or operations problem or cause an out-of-direction movement of greater than one mile (or one-half mile for state highways with Category 6, 7, or 8 designations).

(B) If a flush or traversable median exists, left turns may be ~~approved~~ [permitted] unless an operational or safety problem is identified.

(e) Auxiliary lanes. Auxiliary lanes for state highways must conform to Department Standards, including UDOT standard drawings [~~DD-series~~].

(i) Auxiliary lanes may be required where any of the following apply:

(A) An auxiliary lane has been specifically identified and documented necessary to prevent or correct an operational or safety condition that will be associated with traffic imposed by the creation of a new access or an existing access.

(B) Any of the following apply for an access to an access category 2 or 3 highway:

(I) A left turn lane with deceleration, storage, and taper lengths is required for any access with a projected peak hour left turn ingress turning volume greater than 5 vehicles per hour.

(II) A right turn lane with deceleration and taper lengths is required for any access with a projected peak hour right turn ingress turning volume greater than 10 vehicles per hour.

(III) A right turn lane with acceleration and taper lengths is required for any access with a projected peak hour right turning volume greater than 10 vehicles per hour.

(IV) A left turn acceleration lane may be required if such a design will be a benefit to the safety and operation of the roadway.

(V) Left turn acceleration lanes are generally not required where the posted speed is less than 50 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(C) The following applies for an access to an access category 3 highway:

(I) Left turn acceleration lanes are generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(D) The following apply for an access to an access category 4 or 5 highway:

(I) A left turn deceleration lane with taper and storage length is required for any access with a projected peak hour left ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the required deceleration length.

(II) A right turn deceleration lane and taper length is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the required deceleration length.

(III) A right turn acceleration lane and taper length is required for any access with a projected peak hour right turning volume greater than 50 vehicles per hour when the posted speed on the highway is greater than 40 mph. The taper length must be included in the required acceleration length. A right turn acceleration lane may also be required at a signalized intersection if a free-right turn is needed to maintain an appropriate level of service for the intersection.

(IV) Right turn deceleration and acceleration lanes are generally not required on roadways with three or more travel lanes in the direction of the right turn.

(V) A left turn acceleration lane may be required if it will be a benefit to the safety and operation of the roadway.

(VI) A left turn acceleration lane is generally not required where the posted speed is less than 45 mph, the intersection is signalized, or the acceleration lane would interfere with the left turn ingress movements to any other access.

(E) Any of the following apply for an access to an access category 6, 7, 8, or 9 highway:

(I) A left turn lane with storage length plus taper is required for any access with a projected peak hour left ingress turning volume

greater than 25 vehicles per hour. If the posted speed is greater than 40 mph, a deceleration lane and taper is required for any access with a projected peak hour left ingress turning volume greater than 10 vehicles per hour. The taper length must be included in the deceleration length.

(II) A right turn lane with storage length plus taper is required for any access with a projected peak hour right ingress turning volume greater than 50 vehicles per hour. If the posted speed is greater than 40 mph, a right turn deceleration lane and taper is required for any access with a projected peak hour right ingress turning volume greater than 25 vehicles per hour. The taper length must be included in the deceleration length.

(F) The following apply for an access to an access category 10 highway:

(I) Exclusive turning lanes are required for all intersections. At a minimum all street accesses must provide an exclusive right turn lane with a minimum length of 250 feet, exclusive of tapers. Longer storage lengths may be necessary based on traffic analysis. Left turn lane dimensions to be defined through traffic analysis. Taper and deceleration lengths to meet current Department standards for posted speeds.

(ii) For specifically identified and documented safety and operational reasons, a turn acceleration or deceleration lane may also be required based on any of the following location factors:

- (A) Volume of commercial trucks.
- (B) Influence of nearby access.
- (C) Highway speed and traffic density access volume.
- (D) Existing highway auxiliary lanes close to the access.
- (E) Nearby traffic control devices.
- (F) Available stopping sight distance.
- (G) Topographic and highway design factors.

(iii) For access locations with high percentage of truck use, the Department may require corresponding auxiliary lanes be built to full length and width and the transition taper length extend beyond the full length.

#### **R930-6-8. Conditional Access Permit~~[Access]~~ Application Procedures and Requirements.**

(1) General.

(a) Current standards. Applicant must use the most recent editions of engineering and state standards and best practices, including but not limited to those cited in this rule.

(b) Compliance responsibility. It is the responsibility of the applicant to demonstrate the application meets the requirements of this rule. Requirements for a conditional access permit~~[grant of access]~~ refer to the applicant's responsibility to obtain ~~[a grant of access]~~ approval from the Department before being authorized to~~[granted]~~ access to a state highway.

(c) Approvals and environmental compliance. Applicants must comply with all ~~[F]~~ federal, ~~[S]~~ state, and local authority approvals and laws, including environmental laws before the Department can issue~~[grant]~~ a permit.

(d) Site plan. A site plan approval by a local authority does not entitle the applicant to access a state highway. A conditional access permit~~[Grant of access]~~ from the Department does not imply endorsement or approval of the submitted site plan.

(e) Multiple accesses. A conditional access permit~~[Grant of access]~~ application may cover multiple access connections serving a site.

(f) Review periods. Failure of the Department to comply with the review periods defined in this rule shall not preclude the Department from approving or denying any application.

(g) Encroachment permit. Conditional access permit~~[Grant of access]~~ approval does not allow the applicant to construct the access. An encroachment permit must also be obtained prior to any construction in the state highway right-of-way.

(h) Movement restrictions. A conditional access permit~~[grant of access]~~ does not guarantee a right of full movement access. The Department may, at its own discretion, require access movements to be restricted.

(2) Conditions requiring conditional access permit~~[grant of access]~~.

(a) Access changes. A conditional access permit~~[Grant of access]~~ is required whenever a new driveway, other curb cut, or local street connection is sought on a state highway. This applies to proposals to construct a new vehicular access, modify or relocate an existing access, or to close an access on the state highway right-of-way.

(b) Change in land use type and intensity. A conditional access permit~~[grant of access]~~ is required when there is a change in land use or a change in the land use intensity of an existing access.

(i) Change of land use. A change in land use includes any land use change that requires a change in zoning, site plan, or conditional use approval by the local authority.

(ii) Change of intensity of land use. A change of intensity of land use is considered to have occurred when an existing land use intensifies as described below. The applicant must use current ITE Trip Generation procedures or other Department accepted methodology to identify this change. A level of change requiring a conditional access permit~~[grant of access]~~ is a trip generation that exceeds 100 peak hour trips or 500 daily trips or a change in trip generation of 20% or greater relative to existing conditions. If the property, other than a single-family residential dwelling, is vacant for more than twelve months, the trip generation for that property is considered zero. A conditional access permit~~[grant of access]~~ is also required if trip generation change causes a change in the Access Application Level.

(c) Modification or improvement by local authorities. A conditional access permit~~[grant of access]~~ is required for new or modified public access to the state highway (such as county roads and municipal streets).

(i) Access to subdivisions and other developments must be processed in the same manner as a private access and applied for pursuant to this rule, until the access is constructed, completed, and accepted as a public access and public way by the local authority.

(ii) The local authority shall be considered the applicant for requests submitted by local authorities for a new or modified public access. A private developer~~[ment]~~ may not apply for a private driveway with the local jurisdiction as the applicant.

(iii) Where a private development accessing the roadway of a local authority necessitates access improvements and where the private access shall become and operate as a local roadway connecting to a state highway, the applicant may either be the local jurisdiction, the developer, or a combination, at the discretion of the local authority. The corresponding application must identify the intended connection on the local jurisdiction transportation master plan

~~[(iv) Appropriate requests submitted by local authorities shall be administered by the Department by one of the following:~~

~~\_\_\_\_\_ (A) As provided in this rule for any applicant (including non-public applicants);~~

~~\_\_\_\_\_ (B) By special written agreement; or~~

~~\_\_\_\_\_ (C) By contract between the Department and the local authority.]~~

(d) Transfer of Additional Right-of-Way and Improvements. The increased intensity of traffic associated with a proposed access may require the transferring of new state highway real property and highway improvements to handle the traffic associated with the proposed development. The Department may require the applicant to transfer real property, improvements and highway appurtenances when an essential link exists between a legitimate governmental interest and the transfer of the mitigation requirements and the mitigation requirements are roughly proportionate to the impact of the proposed development. In some instances where the transfer of real property is not feasible, the Department may require the applicant to pay for the mitigation of the development impacts to the highway. Additional right-of-way necessary for the state highway improvements, including but not limited to, travel lanes, turn lanes, and auxiliary lanes, are to be conveyed without cost to the Department by dedication or by a warranty deed in a form acceptable to the Department. The Department may accept a perpetual easement for facilities or improvements located outside of the highway right-of-way. If the applicant transfers the property by warranty deed, all rights, title and interests are conveyed to the Department. The applicant shall provide a title policy for the real property to be transferred to the Department. The title policy shall only contain exceptions approved by the Department. If the property is being dedicated through a plat, the property shall not have any encumbrances that are not approved by the Department. The Department may refuse to accept the transfer of real property if the property has unacceptable encumbrances, contains hazardous substances or other conditions of the property. The real property must be in compliance with all applicable state and federal statutes, regulations and rules.

(e) Temporary conditional access permit~~[grant of access]~~. A temporary conditional access permit~~[grant of access]~~ is required for any temporary driveway or connection to a state highway. A temporary driveway or connection may be approved~~[granted]~~ to accommodate actions associated with site construction or development. The term of the temporary conditional access permit~~[grant of access]~~ shall be noted on the permit but shall not exceed 12 months in duration.

(3) Pre-application coordination.

(a) Department primary contact. The Region permits officer or other designated employee of the Department shall be the primary contact for the applicant. Direct inquiries~~[inquires]~~ regarding an application or review must be directed to this person.

(b) Local agency coordination. To apply for a conditional access permit~~[grant of access]~~, it is recommended that applicants work closely with the local authority's land use approval division and the appropriate Department Region permitting office.

(c) Pre-application meeting. Prior to submitting an application, the applicant must contact the appropriate Department Region permitting office to schedule a pre-application meeting. A pre-application meeting provides Department personnel and local authorities an early opportunity to examine the feasibility of the access proposal with the applicant and to consider whether it is permissible under the Department's standards, the requirements of this rule and requirements of locally adopted access plans. During the pre-



application meeting, the Department will identify and determine the [applicant is advised to consult with the Department during the pre-application meeting to determine the appropriate] access category, access application level, and any traffic impact study requirements.[.] The Department will also identify and determine whether or not a limited-access or no-access control line is affected, whether or not a land value appraisal is required, and other application requirements. The applicant shall clearly identify all neighboring and adjoining parcels where shared ownership interests exist. An application may be submitted any time after the pre-application meeting when all required application components are fully designed, complete, and available to electronically upload into the Department's online permit system. The Department shall review any documents that require recording prior to the document being submitted for recording.

(i) Meeting is not binding. The pre-application meeting is not binding to the Department or the applicant. Information presented and findings generated during the pre-application meeting may be documented and confirmed in a written notification. However, any pre-application written notification or communication from the Department shall not be considered binding.

(ii) Number of meetings. For typical access applications, one pre-application meeting shall be provided in regards to a specific access application. A second pre-application meeting may be allowed at the Department's discretion to address complex access situations, or to include other affected jurisdictional partners. ~~Additional meetings shall not be held until after the application has been submitted and the appropriate fee has been rendered.~~

(4) General [A]application requirements.

(a) The applicant shall complete the conditional access permit application using the form provided by the Department.

(b) The applicant shall complete any other form, or produce any other document, deemed required by the Department, or this rule, to facilitate the timely review of the application.

(i) The Applicant must identify any Limited-Access and No-Access lines adjoining the property. The Department makes final determination whether an established line of Limited-Access or No-Access exist in the area in which access is sought.

(c) When all of the required documents are assembled and complete, but prior to being recorded or finalized, the applicant shall upload the documents into the Department's online permit system to initiate the formal completeness review and application review process.

(d) When the Department deems the application complete, and prior to starting the application review process, the applicant will receive an automated email from the online permit system with instructions on how to electronically pay the appropriate non-refundable permit review fee. Once this permit fee is paid the Department will initiate the application review process which will result in the permitting outcome (e.g., approval or denial).

~~[(a) State highway access category. The applicant must identify and note the appropriate access category assignment for the application. Upon submittal of the application, the Department shall verify the access category assignment. The Department shall make the final determination on the appropriate access category assignment.~~

~~(b) Access type. The applicant must note on the application the type of access requested. Access types are defined~~

~~based on the applicant's property land use and include agricultural, residential, industrial or commercial accesses.~~

~~(c) Connection service type. The applicant must note on the application the type of physical connection requested. The connection may serve either a private or public street or private or public driveway connection.~~

~~(d) Limited access and no access lines. The Applicant must identify any Limited Access and No Access lines adjoining the property. The Department makes final determination whether an established line of Limited Access or No Access exist in the area in which access is sought.~~

~~(e) Permit type. The applicant must identify the type of access permit requested for the site. Permit types include grant of access, temporary grant of access, and encroachment. Procedures and requirements for the encroachment permit are included in Subsection R930-6-8(8) of this rule. The application process for a grant of access and temporary grant of access are the same. A temporary grant of access may be requested alone or in conjunction with a grant of access for a site.~~

~~(e[f]) Access application level.[The applicant must identify the level of application required for the site.] The level of application required is based on the size and magnitude of the project being proposed by the applicant. The application levels define specific threshold elements related to required applicant site plan elements, permitting process, permitting schedule, application [n] fees, traffic impact study requirements, and other permit related issues. The applicant must declare all property within the application area to which they hold interest, including, but not limited to, property to be developed. The application levels are based on anticipated changes to state highway facilities and site-generated traffic volumes for daily [(ADT)] and/or peak hour time periods. Higher application levels are required when the construction of the proposed access would require significant modifications to elements of a state highway. The Department reserves the right to determine at its own discretion which modifications are considered minor or significant. Generally, the Department will consider modifications to traffic signals, pedestrian ramps, and sidewalks to be minor modifications. For convenience, application level thresholds are also presented in terms of standalone land use intensity. Land use intensities are based on published ITE Trip Generation rates. The Department may require the applicant to provide more precise trip generation estimates to determine the appropriate access application level for mixed land use or complex developments.~~

~~(i) Application level I thresholds. Applicant shall meet the requirements of application level I if the projected site generated traffic is less than 100 daily vehicle trips[ADT] and there are no proposed modifications to traffic signals or elements of the roadway. Standalone[stand alone] land use intensities corresponding to application level I site generated traffic thresholds include the following:~~

- ~~(A) Single Family: < 10 units.~~
- ~~(B) Apartment: < 15 units.~~
- ~~(C) Lodging: < 11 occupied rooms.~~
- ~~(D) General Office: < 9,000 square feet.~~
- ~~(E) Retail: < 2,500 square feet.~~

~~(ii) Application level II thresholds. Applicant shall meet the requirements of application level II if the projected site generated traffic between 100 and 3,000 ADT or less than 500 peak hour vehicle trips and there are minor modifications to traffic signals or elements of~~

the roadway. Standalone land use intensities corresponding to application level II site generated traffic thresholds include the following:

- (A) Single Family: 10 to 315 units.
- (B) Apartment: 15 to 450 units.
- (C) Lodging: 11 to 330 occupied rooms.
- (D) General Office: 9,000 to 270,000 square feet.
- (E) Retail: 2,500 to 70,000 square feet.
- (F) Gas Station: < 18 fueling positions.
- (G) Fast Food: < 6, 000 square feet.
- (H) Restaurant: < 26,000 square feet.

(iii) Application level III thresholds. Applicant shall meet the requirements of application level III if the projected site generated traffic between 3,000 and 10,000 ADT or between 500 to 1,200 peak hour vehicle trips or there is a proposed installation or, in the determination of the Department, significant modification of one or more traffic signals or elements of the roadway, regardless of project size. Standalone land use intensities corresponding to application level III site generated traffic thresholds include the following:

- (A) Single Family: 316 to 1,000 units.
- (B) Apartment: 451 to 1,500 units.
- (C) Lodging: 331 to 1,100 occupied rooms.
- (D) General Office: 270,001 to 900,000square feet.
- (E) Retail: 70,001 to 230,000 square feet.
- (F) Fast Food: 6,000 to 20, 000 square feet.

(iv) Application level IV thresholds. Applicant shall meet the requirements of application level IV if the projected site generated traffic greater than 10,000 ADT or there is a proposed installation or, in the determination of the Department, significant modification of two or more traffic signals, addition of travel lanes to the state highway or proposed modification of freeway interchange, regardless of project size. Standalone land use intensities corresponding to application level IV site generated traffic thresholds include the following:

- (A) Single Family: > 1,000 units.
- (B) Apartment: > 1,500 units.
- (C) Lodging: > 1,100 occupied rooms.
- (D) General Office: > 900,000square feet.
- (E) Retail: > 230,000 square feet.

(f) Reasonable alternate access. The applicant shall identify any and all reasonable alternate access for the subject site.

(i) Determination of reasonable access. Reasonable local access shall be determined by the Department [in consultation with the appropriate local authority and as defined in this rule].

(ii) Limited-access and no-access control lines. When applications are made for properties adjoining a state highway with a limited-access or no-access control line, reasonable alternate access shall be afforded through the use of other existing or planned facilities whenever possible. [in consultation with the appropriate local authorities and their transportation master plan.]

(g) Traffic impact study (TIS) purpose. The purpose of the TIS is to identify system and immediate area impacts associated with the proposed access connection(s). A traffic study may be required to identify, review, and make recommendations for mitigation of the potential impacts a development may have on the roadway system.

(i) Applicant responsibility. The applicant is responsible for the submittal of an acceptable TIS as determined by the Department. The TIS, when required, shall be completed by an individual or entity demonstrating capability to analyze and report

mobility, traffic engineering elements, and design elements as necessary for the application study area and site design. Additionally, the TIS shall be stamped by a professional engineer licensed in the State of Utah.

(ii) TIS Requirements and Waiver Evaluations. A TIS may be required for any conditional access permit or for any encroachment permit. The Department, at its discretion, determines when a TIS is required. The Department will notify the applicant whether or not a TIS is required during the pre-application meeting. In general, the TIS requirements may be waived with the written concurrence of a Region Traffic Engineer, or designee, for Access Application Levels I and II. Access Application Levels III and IV may be waived with the written concurrence of the Traffic Operations Engineer, or their designee, only when the applicant is voluntarily constructing all mitigation measures recommended by the Department. If such mitigation measures are not easily identifiable, or if the potential traffic impacts associated with a proposed access point modification are unknown (or considered high-risk) the TIS shall not be waived for any Access Application Level. Additionally, a TIS is required for modifications to existing state highway traffic control equipment and shall not be waived.

(ii) Applicant justification. Applicants wishing to waive the requirement for TIS Levels III and IV must submit a written request, including justification for waiving the requirement for a TIS.

(iii) Department documentation requirement. Any TIS waiver the Department authorizes shall be documented in writing and become part of the official permit record within the Department's online permit system. This record shall contain the individual's name that is authorizing the waiver, the date the waiver was authorized, and justification for approving the waiver.

(iv) TIS details, format, and study area boundary. The Department shall provide the applicant basic instructions regarding the details, format, and study area boundary for the TIS during the pre-application meeting.

~~(h) Traffic impact study (TIS). The applicant is responsible for performance and delivery of an acceptable traffic impact study. The TIS shall be completed by an individual or entity demonstrating capability to analyze and report mobility, traffic engineering elements, and design elements as necessary for the application study area and site design.~~

~~(i) Conditions requiring a TIS. A TIS is required for all grant of access applications. A TIS is required for modifications to existing state highway traffic control equipment. A TIS may also be required for encroachment permit applications. For access application levels I and II, the Department may, at its own discretion, waive requirements for a TIS. Applicants wishing to waive the requirement for a TIS must submit a written request, including justification for waiving the requirement for a TIS. Requirements for a TIS for access application levels III and IV shall not be waived.~~

~~(ii) Purpose of the TIS. The purpose of the TIS is to identify system and immediate area impacts associated with the proposed connection(s). A traffic study is necessary to identify, review, and make recommendations for mitigation of the potential impacts a development may have on the roadway system.~~

~~(iii) Study area of the TIS. The TIS must include any proposed or existing access or connection within an area identified by the Department. Determination of the extent of the TIS study~~

area is at the discretion of the Department. The study area may be defined by, but not limited to, an identified safety problem, accident review, congested locations, or as a result of a change in land use or access in accordance with an application. The study area may also be defined by the size and intensity of the development and surrounding development and by a travel time boundary, area of influence, parcel boundaries, physical boundaries, or political boundaries.

~~(iv) Scope of the TIS. The TIS must, at a minimum, incorporate traffic engineering principles and the standards as presented in this rule. Additional requirements and investigation not specifically identified in this rule may be imposed upon the applicant as necessary. In general, the TIS scope must achieve the following:~~

~~(A) Present project overview of the proposed development including information such as site location and proposed access point(s), phased and full development trip generation, connection point design elements, adjacent and relevant development, existing and future traffic volumes, assessment of the system impacts, and mitigation measures as appropriate.~~

~~(B) Document whether or not the access request can meet the standards and requirements of this rule and other applicable regulations.~~

~~(C) Analyze appropriate location, spacing, and design of the access connection(s) necessary to mitigate the traffic.~~

~~(D) Analyze operational impacts on the highway and permissible under the highway's assigned access category and in accordance with applicable requirements and standards of this rule.~~

~~(E) Recommend the need for any improvements to the adjacent and nearby roadway system to maintain a satisfactory level of service and safety and to protect the function of the highway system while providing appropriate and necessary access to the proposed development.~~

~~(F) Assure that the internal traffic circulation of the proposed development is designed to provide safe and efficient access to and from the adjacent and nearby roadway system consistent with the purpose of this rule.~~

~~(G) Analyze and recommend the means for land uses to minimize their external transportation costs to the traveling public through traffic improvements necessitated by that development as well as making the fullest use of alternative travel modes.]~~

(5) Application submittal.

(a) Application and attachments. Applicants must submit to the appropriate Department Region permitting office, the complete application including any required attachments reasonably necessary to review and assess the application and complete the application review process. Required attachments may include detailed site plans, maps, traffic studies, surveys, deeds, agreements, access value appraisals, documents, and other data to demonstrate compliance with this rule. Maps and site plans to be submitted may include, but are not limited to utilities in the vicinity of the access and utilities to be moved. The Department shall determine the scope of the attachments necessary for application submission based on the identified access application level.

(b) Site or development overview. Applications must provide a description of the site/development including site plan and overview materials such as preliminary maps, plans, and documents to illustrate the site, the size and type of proposed land use, estimated traffic volumes, vehicle types generated by the site, adjacent public

roads and highways, adjacent properties, and any existing or available access points. The application must include all the information and materials requested at the pre-application meeting. Plans may be required to be stamped by a professional engineer licensed in the State of Utah.

(c) Document ownership. All submitted applications become records~~[the property]~~ of the Department. The Department may not request items without relevance to the approval or denial of the application. If the applicant is other than the fee surface rights owner of the property to be served, the applicant shall include sufficient evidence of concurrence or knowledge in the application by the fee~~[surface rights]~~ owner and proof of development rights (i.e. option to buy, federal use permit). The applicant shall give complete names, physical address~~[es]~~, email address, and telephone numbers of the property owner(s), the applicant(s), and primary contact person, on the application along with the expected dates of construction and commencement of use of the access.

(d) Corporate or agency applicant. When the owner or applicant is a company, corporation, government agency or other entity, the application must provide the office, title, and the name of the responsible officer. A corporation must be licensed to do business in the State of Utah.

(e) Misrepresentation. Intentional or negligent misrepresentation of existing or future conditions or of information requested for the application for the purposes of getting a more favorable determination is sufficient grounds for the rejection or denial of the application or revocation of a conditional access permit~~[granted access]~~ and encroachment permit.

(f) Non-refundable ~~[A]~~ application review fees. A non-refundable application review fee shall be assessed for the review and assessment of the conditional access permit application~~[grant of access]~~ and the temporary conditional access permit~~[grant of access]~~ application. The non-refundable review fee may be waived for local government agencies where a public street connection is being made.

(i) The Department shall establish and collect a reasonable schedule of fees for the review and administration of all applications referenced in this rule~~[grants of access and construction permits pursuant to this rule. The permit fee schedule shall not exceed the cost of the review and administration of the application.]~~ The appropriate application fees may be found in the Department's authorized schedule of fees.

(ii) The application review may not proceed until payment has been received by the Department. The application shall not be considered submitted until payment has been received.

(6) Application review and approval.

(a) Completeness review. The Department shall review the application to verify ~~[that]~~ the required information has been submitted. If the Department determines an application to be incomplete, the applicant shall be notified in writing including by, but not limited to, email notification. The notice shall include any outstanding items, issues, or concerns~~[given the available information]~~. Upon receipt of the Department's correspondence~~[letter]~~ requesting more information, the applicant shall timely provide additional data and information as appropriate~~;~~ or withdraw the application. The applicant is required to submit the necessary information as determined by the Department to complete the application within 30 calendar days of

said request ~~[six months from the date the application was submitted.]~~ Otherwise the application may be~~[is]~~ considered withdrawn.

(b) Completeness review period. The typical completeness review period is ten working days. This review period begins when the applicant submits a completed application packet with all required components for approval and has rendered the appropriate ~~[non-refundable]~~non-refundable application review fee. Once additional requested information is submitted, or resubmitted, by the applicant the (10) ten-day completeness review period starts over.

(c) Application review. The Department shall begin processing the application when the application has been identified as complete. The Department shall use this rule and any other applicable state and federal laws, policies, or guidelines to evaluate and act on the application. If during the review of the application it is found that additional information for review is necessary, the Department shall correspond~~[address]~~ in writing to the applicant the need for additional information. Written notification may include, but not be limited to, email notification. The application review period may be lengthened or begin again when the applicant submits significant additional information.

(d) Signatures. When this rule or related official forms require the signature of the permittee(s) or applicant, the signatures shall be that of the specific individual or if a corporation or partnership or other entity, the duly authorized officer or agent of the corporation or partnership or other entity. The applicant shall include the name of the corporation, partnership, or entity with the signature.

(e) Application review period. The typical application review period is forty-five working days.

(f) Action by the Department. As determined by the ~~[standards]~~requirements of this rule, the Department may approve the conditional access permit~~[grant the access]~~ as proposed, require layout, design and location modifications as it considers appropriate, restrict one or more turning movements as necessary to reduce traffic and safety impacts, or deny the request~~[access]~~.

(i) The application shall be denied if the proposed access cannot meet the requirements or standards of this rule including consideration of appropriate variance criteria or other applicable laws. If the Department denies the application, the Department shall provide a written explanation of the decision.

(ii) Upon permit~~[access]~~ approval, the Department shall prepare a conditional access permit~~[grant of access]~~ document and transmit it to the applicant.

(iii) The issue date of the conditional access permit~~[grant of access]~~ shall be the date the Department representative signed the permit~~[grant of access]~~.

(g) Conditional access permit~~[grant of access]~~ expiration. A conditional access permit~~[grant of access]~~ shall expire if the access construction is not completed within twelve months of the permit issue date or before the expiration of any authorized extension. When the permittee is unable to complete construction within 12~~[twelve]~~ months after the permit issue date, the permittee may request a [six]12-month extension from the Department. No more than one [six]12-month extension may be approved~~[granted]~~ under any circumstances. The applicant must submit a request for an extension in writing to the Department before the ~~[permit]~~original 12-month period expires. The request shall state why the extension is necessary, when construction is anticipated, and include a copy the conditional access permit~~[grant of access]~~

approval. Extension approvals shall be in writing and may include, but not be limited to, email documentation. For any~~[To reestablish an]~~ access approval that has expired, the applicant shall begin the application procedures again. Once an issued permit has expired any prior approval is null and void. Any subsequent application must conform to the latest permitting standards and conditions without reliance upon any past conditions that may have been deemed acceptable on any previously approved, but expired, permit.

(h) The Department shall maintain a copy of the conditional access permit~~[grant of access]~~ issued for as long as the access point~~[granted access]~~ is in existence, or as otherwise prescribed by law~~[pursuant to the grant of access]~~.

(7) Additional requirements for limited-access and no-access control line[s] modifications.

(a) ~~[Applicable procedures and standards. —]~~The following procedures and standards apply to requests for the modification of a [L]imited-[-A]access or [N]o-[-A]access line.

(i) No-access control lines. A modification of a no-access line for the purpose of creating a new access point may be~~[is only]~~ allowed to create a [general or local]city or county street connection as proposed by the local authority where no other reasonable alternate access to abutting property can be provided.

(ii) Limited-access control lines. Only in cases where, in the determination of the Department, significant public benefit is expected may new access points~~[openings]~~ be authorized~~[granted]~~ through an established [L]imited-[-A]access line[s]. A request for a new or modified access opening shall be submitted by the property owner or local authority in writing to the Department and must clearly identify the proposed public benefit resulting from ~~[for]~~the access opening.

(iii) If there are other justifications for the access opening that are not solely for the public's benefit, the applicant shall identify those justifications and any public interests served by those justifications.

(iv) Upon review of the application, the Department, in its sole discretion, shall determine whether there is a sufficient public benefit to justify allowing the proposed new or modified access opening.

(b) Extended review period for limited-access and no-access control line modifications. While most requests for a new access opening may be reviewed within 45 days, additional review time may be needed for these types of applications that can require an external review by the Federal Highway Administration. There is no fixed amount of time that the Department may take to review a request to create or modify an access [opening]control line. Complex or incomplete requests may take longer than 45 days to review and approve or deny.

(c) Corridor agreements. Requests to modify a limited-access line may require the applicant to produce or provide analysis for a signal control plan or access corridor control plan. Requests to modify a no-access Line must include a signal control plan agreement or access corridor control plan agreement.

(i) If no such agreement exists, the applicant must complete an analysis that the Department may use to create or modify a signal control plan or access corridor control plan.

(ii) The Department, local authorities and, if one exists, the Metropolitan Planning Organization, must ratify signal control plan and access corridor control agreements.

(iii) Signal control plans and access corridor control plans must be consistent with the local authority's transportation master plan. Such plans must also conform to the Metropolitan Planning Organization's plans and designs.

(d) Approval or denial decision. Upon recommendation of Department staff, the Department Deputy Director or designee shall approve or deny the conditional access permit~~[grant of access]~~ request for changes to limited-access lines or no-access lines and send notice of the decision to the applicant. FHWA review is required for federal-aid roads based on the Stewardship and Oversight Agreement between FHWA and the Department, even if the right-of-way was nonparticipating.

(e) Fees and reimbursements. The Department considers access ~~[control]~~ rights ~~[an asset that is purchased and can be sold]~~ a real property interest that the Department may sell upon payment of fair market value. Alternatively, the Department may retain ownership and allow an access by conditional access permit, with a reduced fee that takes into account exchanges of value received by the Department or that are otherwise in the public interest. Any ~~[approved]~~ changes to limited-access or no-access lines require[s] reimbursement to the Department of its fair market value or a conditional access permit. ~~[If the access opening is approved and is to serve private property, the property owner shall pay the Department for property appreciation, resulting from the Department's relinquishment of the access. The appreciation of the private property involved]~~ Fair market value shall be determined by an independent licensed appraiser as listed within the Department's certified pool of approved appraisers. The fee for a conditional access permit is its fair market value, less offsets for adequately supported exchanges of value offered by the applicant and accepted by the Department. The Department may apply a credit to a purchase or a conditional access permit fee in the following circumstances:

(i) when the applicant shows that an exception to charging fair market value or the full conditional access permit fee amount is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use;

(ii) use by public utilities in accordance with 23 CFR part 645;

(iii) use by railroads in accordance with 23 CFR part 646;

(iv) use for bikeways and pedestrian walkways in accordance with 23 CFR part 652;

(v) uses under 23 USC Section 142(f), Public Transportation; or

(vi) use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in 23 USC Section 710.703, shall not constitute a transportation project exempt from fair market value requirements. For example, the Department may allow credit against a conditional access permit fee for proposed mitigation of impacts caused by any change to limited-access or no access lines, including without limitation where the private person is relinquishing access rights, where the person agrees to permit future safety modifications to the access without compensation, where the person has committed to dedicate the access and related improvements to a municipality, and/or where the person has agreed to dedicate additional right-of-way to the Department beyond or in

addition to any right-of-way required to accommodate safety features required by the access opening (e.g., acceleration and deceleration lanes).~~[The property appraisal must show the property valuation before the access is created or modified (the before condition) and after the access is created or modified (the after condition). The difference in the appraised property valuation in the before condition, when compared with the appraised property valuation in the after condition, determines the current fair market value for the access, which shall be the price of the access.]~~ Because ~~[appraised]~~ access ~~[valuation]~~ costs are a major consideration for any development-related initiative, ~~[it is considered a best practice for the]~~ grantee or applicant [to] should obtain the appraisal at the beginning of [the grant of access] a proposed purchase or conditional access permit application process. Upon approval to modify a limited-access line or no-access line, the grantee or applicant must pay a conditional access permit fee, or the fair market value of the access right acquired from the Department. The property owner shall also pay all costs for construction of gates, approaches and any other incidental construction costs involved. Since the functions and responsibilities of local governments serve public interests, the Department may waive or share in the costs of providing access rights to a local government.

(f) Recorded deed. The Department, in consultation with the applicant, shall execute and record any deeds associated with an approved conditional access permit~~[the grant of access]~~ on the appropriate property deed indicating the access opening. The applicant shall revise all maps and plans as necessary to facilitate the conditional access permit approval process as required by the Department~~[This procedure applies to roads constructed with federal-aid funds, which will remain on a federal-aid system and be transferred to local authorities.]~~

(g) Review considerations. Department and, if applicable, FHWA staff shall investigate safety and other operational features and impacts of the request review and comment on the following:

(i) Finding or demonstration of no reasonable alternate access and,

(ii) Providing the access connection to a local street system or an identified local street system on which:

(A) The opening is identified on the local master street plan,

(B) The opening provides continuity to other local streets,

(C) The opening provides reasonable alternate access via the local system,

(D) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(iii) Identifying the access on an agreed local signal control or access corridor control plan on which:

(A) The opening provides continuity to other local streets,

(B) The opening provides reasonable alternate access via the local system, and

(C) If the opening creates or exists as a dead-end, it is for a local and not private connection.

(h) Revision of access openings. If a property owner desires to change the location, use, or size of an access opening, after execution of the deed, a new application must be submitted to the Department giving the location of the desired change and its justification. Changes shall comply with the standards and requirements of this rule.

(i) The Department shall evaluate the application to determine if the change in location, use, or size will cause any adverse

safety or other traffic operational effects and submit a report with recommendations to the Deputy Director.

(ii) If the change is approved by the Deputy Director and by FHWA for federal-aid roads, new deeds shall be prepared and executed, and all maps corrected.

(iii) The property owner shall pay for all costs involved in closing or modifying an existing access opening.

(iv) ~~External [R]~~ requests for modification of access control shall be forwarded with recommendations to the Department by the local authority.

(8) Encroachment permit requirements.

(a) General. No work on the state highway right-of-way may begin until an approved encroachment permit is issued by the Department and the permittee is authorized in writing to proceed. Written authorization may include, but not be limited to, email.

(i) Prior to any construction, the applicant must receive approval for an encroachment permit (related to the conditional access permit~~[grant of access]~~ approval) with appropriate traffic control, construction plans, bonds, and insurance requirements. The applicant must attach a copy of the conditional access permit~~[grant of access]~~ document to the encroachment permit application.

~~[(ii) In addition to procedures and requirements defined herein, all of the application procedures defined for grant of access application within this rule, including review periods, apply to applications for an encroachment permit.]~~

(ii~~[i]~~) All construction materials, techniques, and processes shall be in conformance with the terms, conditions, and limitations of the permit and consistent with Department requirements and standard specifications.

(b) Permit fees. A non-refundable review fee shall be assessed for approved encroachment permits. The Department may not authorize the permittee to begin work on the state highway until the permit fee is paid.

(c) Notice of construction and work completion time-frames. The permittee shall notify the Department at least (2) two working days prior to any construction within state highway right-of-way. The permittee shall execute access construction in an expeditious and safe manner. Access construction must be completed within (90) ninety days from initiation of construction within the highway right-of-way.

(d) Phased construction of access. Upon request, the phasing of the installation of access design requirements may be allowed if the average use of the access at any time does not exceed the constructed design and the Department or local authority is provided monetary or legal guarantees that access approval terms, conditions and limitations shall be met prior to any use of the access exceeding the existing design of the access.

(i) The following items may be used to provide the monetary or legal guarantees referenced above:

(A) Posting a bond.

(B) Irrevocable letter of credit.

~~[(C) Certificates of deposit.~~

~~[(D) Inclusion in zoning ordinance.~~

~~[(E) Inclusion in subdivision plats or land use permit requirements.~~

~~[(F) Inclusion in the deeds to the properties involved.]~~

(C[G]) Any other techniques as approved and accepted by the Department.

(ii) All such arrangements shall be included as terms, conditions, and limitations~~[conditions]~~ of the permit.

(iii) The local authority and Department may record notices in the county records of such agreements to inform future property owners of potential liabilities and responsibilities.

(iv) If the project is to be phased over time, the schedule, location and other details of each phase must be provided as part of the application for an encroachment permit.

(e) Traffic control. The permittee shall provide appropriate construction traffic control devices at all times during access construction in conformance with the MUTCD and ~~[Department]~~UDOT standard drawings for traffic control.

(i) The applicant shall provide traffic control plans detailing the location, duration, design, use, and traffic controls of the access.

(ii) Construction may not commence until the traffic control plan has been approved by the Department.

(iii) Traffic control plans must be sealed (stamped) by a Professional Engineer licensed in the State of Utah or, when determined appropriate by the Department, a certified Traffic Control Supervisor.

(iv) Traffic control plans must conform to the current MUTCD and Department requirements and standards, including Department Traffic Control Standards and Specifications.

(v) Traffic control plans must address the following:

(A) Construction phasing.

(B) Lane/shoulder closures.

(C) Tapers and device spacing.

(D) Sign boards, arrow boards, and variable message signs.

(E) Temporary modifications to traffic signals.

(F) Time restrictions and work schedule.

(G) Lane shifts.

(H) Flagging operations.

(vi) Traffic control plans may be revised as necessary with Department concurrence.

(vii) The Department may establish a fee schedule to charge an hourly fee or daily fees for the closure of any travel lanes necessary for the construction of a private access. The purpose of the fee is to encourage the quick completion of all work that reduces highway capacity and safety or interferes with the through movement of traffic.

(f) Professional evaluation. For any permit involving changes to state highways or structures, the Department may require the permittee to hire a Professional Engineer licensed in the State of Utah to inspect the access and state highway and structures carefully and to affirm to the best of their knowledge and belief that the construction is in compliance with the permit, Department specifications, materials construction monitoring and testing, and to report any item that may not be in compliance or cannot be determined to be in compliance and the nature and scope of the item relative to compliance. The Department may require testing of materials at the permittee's expense. When so required by the Department or as specified on the permit, test results must be provided to the Department.

(g) Construction operations. Installation of highway and access elements must be in compliance with all Department requirements for conditional access permit~~[grant of access]~~ and encroachment permits, the ~~[Department]~~UDOT standard drawings and the state or local health ordinance specifications for culverts, catch basins, drainage channels, and other drainage structures.

(i) Applicant must ensure adequate sight distance for traffic operation and comply with the requirements of the Department approved traffic control plans during all construction operations.

(ii) Applicant must provide proper drainage, suitable slopes for maintenance operations, and good appearance during construction operations.

(iii) Trees, shrubs, ground cover, or other landscape features may need to be removed, replaced, or suitably adjusted.

(iv) Applicant must free the construction buffer area, as defined by Department traffic control standards from any encroachment that will hinder traffic. Applicant must grade or landscape the buffer area between driveways to prevent use by vehicles while protecting clear sight across the area.

(9) Withdrawn applications.

(a) No payment. A permit shall be deemed withdrawn if the Department has not received the signed copy of the permit or the non-refundable application review fee payment, if any, from the applicant within ~~(30)thirty calendar~~[forty-five] days of the date of approval transmittal.

(b) Non-responsive applicant. The application may~~shall~~ be deemed withdrawn if the applicant fails to provide requested documents, plan alterations, or similar application components as required by the Department within 30 calendar~~[sixty]~~ days of such a request. The clock for a non-responsive applicant starts anytime the Department provides the applicant a written request for additional information, plan alterations, or other application components deemed necessary to effect further review of the application. Written requests for additional information may include, but are not limited to, email. Prior to deeming a nonresponsive application withdrawn, the Department shall make a minimum of ~~(2) two~~[three] direct contact attempts in approximately ~~(2) two~~[-]-week intervals to advise an applicant that their application~~[access approval]~~ is in jeopardy of being terminated and classified as withdrawn. Contact attempts may be made in person, via email, written letter, or phone call.

(c) Resubmission. Once an application is deemed withdrawn, the applicant must:

(i) Submit a new application.

(ii) Include a complete re-submittal of the current plans and studies.

(iii) Pay a new non-refundable application review fee.

#### **R930-6-9. Conditional Access Permit Variances ~~and Appeals~~.**

(1) General.

(a) This section describes procedures and requirements for applicants to request a variance from the standards and requirements of this rule relating specifically to conditional access permits.~~[This section also describes the procedures to appeal the Department's decision to deny a grant of access or encroachment permit request.]~~

(b) Variations from provisions of this rule may be allowed if they do not violate state and federal statutes, laws, or regulations and the Department has determined the proposed applicant mitigation measures documented in a variance request are sufficient for~~[there is no reasonable alternate access and the access and use of the state highway right-of-way will not compromise]~~ the safety and operation of the of the state highway.

(2) ~~[V]variance format~~[requests].

(a) ~~[Application submittal.]~~A variance may be considered for any design standard of this rule that is not applicable

or feasible given the proposed physical and operational characteristics of the site. Applicants seeking a variance from the standards and requirements of this rule must submit a thoroughly detailed variance request ~~[as an attachment to the grant of access or encroachment permit application]~~using the Department's Variance Request Form. The Department may allow a request for a variance as a supplement to a previously submitted application if the Department determines that it is in the public interest to do so.

(i) General requirements. The applicant is responsible to demonstrate that the variance request meets minimum acceptable engineering, operation, and safety standards. It must also demonstrate it is not detrimental to the public health, welfare, and safety and that it is reasonably necessary for the convenience and welfare of the public.

(A) The request for a variance must specify, in writing, why the variance is appropriate and necessary. The request must include documentation of conditions with and without the variance ~~[and documentation showing that the applicant has considered]~~ including all practical mitigation alternatives. This documentation must~~[and]~~ demonstrate that better alternatives in terms of highway operations are impracticable~~[not feasible]~~ or do not exist.~~[A variance from the spacing standards shall not be considered unless the subject property and proposed access points cannot achieve the minimum spacing standards under the appropriate access category and no other reasonable alternate access can be afforded the site.]~~

(B) The applicant must show that the variance request results from the application of the standards or requirements of this rule and is not self-created or self-imposed. ~~[(such as by)]~~ For example, the applicant acting with or without knowledge of the applicable standard, ~~[or]~~ requirement, or purchasing the property with no access or existing access~~[)].~~

(ii) Existing non-conforming access. Non-conforming modifications to an existing highway access that is either in use or can demonstrate historical use and does not comply with the provisions of this rule, may be allowed when the applicant demonstrates to the Department that the proposed access point(s) modifications will improve the operation and safety of the highway. Consolidation of existing access points is considered ~~[to]~~a public benefit to~~[the]~~ highway operations and is encouraged. Where there are multiple existing accesses serving a site, the Department shall consider an overall permanent~~[-50 percent]~~ reduction of access point(s) as one justification element when contemplating the merits of a variance approval~~[(rounded up for odd numbers) to demonstrate an improvement to operations of the highway]~~.

(iii) Limited-access and no-access facilities. Variance requests to modify a limited-access line or no-access line shall include detailed reports of appraisals, costs and justification for the variance. A request to modify a limited-access line or no-access line shall be treated as a request for variance. The Department may consider variances from the provisions of this rule for limited-access facilities when a careful appraisal reveals extensive damage, or if needed frontage roads would involve excessive right-of-way costs or construction costs.

(b) Department review considerations. The Department shall not approve~~[grant]~~ variances that, in the Department's determination, pose hazards to public mobility, health, safety, and welfare. The Department shall not authorize~~[grant]~~ variances for procedural requirements. The Department shall review the variance request for consistency with the purposes of this rule. The

Department shall consider the following specific factors in determining that ~~[the granting of]~~ the approval of a variance will not negatively impact the current and proposed operation of the highway:

(i) The applicant has considered all other feasible alternatives to provide reasonable alternate access to the property or development and can demonstrate that better alternatives in terms of highway operations are impracticable~~[not feasible]~~ or do not exist.

(ii) The applicant has considered access through, or entered into, a shared use driveway or access point agreement with an adjacent land use. If no such agreement is included with the variance request as a mitigation measure, the applicant must demonstrate ~~[and]~~ such a shared use access is not feasible.

(iii) The applicant is providing on-site or off-site traffic improvements that might offset the negative impacts of approving~~[granting]~~ an access that does not meet the provisions of this rule.

(iv) The applicant has considered and demonstrated trip reduction strategies that allow the access to properly function without creating a negative impact to the highway.

(v) The applicant has provided traffic engineering or other studies (if requested) to determine that the access will not degrade the efficient flow of traffic on the highway in terms of safety, capacity, travel speed, and other functional features of the highway.

(c) Department review period. The review periods defined within this rule for conditional access permit~~[grant of access]~~ applications shall apply to a request for variance~~[applications]~~.

(d) Department documentation. The Department shall include in its files documentation of reasons for approving or denying a variance request.

(e) Limitations and conditions of variance approval. An approved conditional access permit~~[grant of access]~~ or encroachment permit may stipulate conditions and terms for the expiration of the permit when the necessity for the variance no longer exists. It may also require the permittee to improve, modify, eliminate, or correct the condition responsible for the variance when it is evident that the justification for the variance is no longer valid. Such stipulations and requirements shall be stated in the approved permit.

~~[(3) Appeals.~~

~~(a) Applicant appeal rights. The applicant may appeal the Department's decision only if the Department has denied a grant of access, encroachment permit or variance request. Any appeal of Department action must comply with this rule, R907-1, and Utah Code Title 63G Chapter 4, Administrative Procedures Act. The Assistant Attorney General shall assist the Department Region Director during the hearing and drafting of the final order.]~~

### **R930-6-10. Conditions of Right-of-Way Use.**

(1) General.

(a) This section describes conditions that apply to all connections, encroachments, and uses of the state highway right-of-way. The conditions and requirements of this section are in addition to other conditions, limitations, and requirements of this rule and the conditional access permit~~[grant of access]~~ and encroachment permit.

(2) Right-of-way encroachment requirements.

(a) Prohibited right-of-way uses. The state highway right-of-way shall not to be used by anyone other than the Department for servicing vehicles or equipment, displays, sales, exhibits, business

overhang signs, parking areas, banners, or any other form of advertising, or conducting of private business.

(i) The Department at its sole discretion may waive the provision of (2)(a) for electric vehicle charging stations, approved park and ride lots, and dedicated meter parking stalls only in instances where a formal written agreement has been agreed upon and executed between the Department and the local government within which the waiver is requested.

(b) Buildings and structures. The placement of buildings or structures of any type within state highway rights-of-way is not allowed unless authorized by a permit obtained from the Department.

~~(c) [Advertising.—Private advertising or business endeavors on federally funded or other state highway rights-of-way are prohibited.~~

~~(i) No part of the state highway right-of-way may be used for servicing vehicles or equipment, displays, sales, exhibits, business overhang signs, parking areas, banners, or any other form of private advertising or to conduct private business.~~

~~(ii) Special advertisement may be allowed within the state highway right-of-way if it will not compromise traffic flow or safety and will be in the public interest. An approved~~~~[permitted]~~ encroachment to occupy the right-of-way for such advertising may be issued, for a time not to exceed one week. All such special advertisement shall not conflict with any provisions of Utah's Outdoor Advertising Act.

(d) Mailboxes. Installation of new mailboxes must be approved by the appropriate Department Region Director or an authorized representative. All new mailboxes placed within a state highway right-of-way must be constructed in conformance with ~~[Department]~~UDOT standard drawings~~[-GW-7 and GW-8]~~. Existing mailboxes located within the state highway right-of-way must be maintained or corrected to conform to the Department standards. Owners of mailboxes deemed nonconforming shall be notified in writing by the Department Region Director or an authorized

representative. Within thirty days of receipt of notice, the owner must, at its own expense, reconstruct the mailbox or otherwise correct any deficiencies to conform to current safety standards and regulations of the Department. The Department may contact the postmaster and stop delivery of mail until compliance is achieved. Mailboxes may be deemed nonconforming for the following:

(i) Mailboxes that constitute a traffic hazard are considered nonconforming.

(ii) Mailboxes and supports that are in poor repair and detract from the appearance of the highway may be considered nonconforming.

(iii) Any part of a mailbox that is over 50 inches high is considered nonconforming

(iv) Any part of a mailbox that is located within the shoulder is considered nonconforming.

(v) Mailbox supports that exceed any of the following criteria are considered nonconforming:

(A) Wood support with over 16 square inches cross-sectional area.

(B) Metal support with greatest dimension over 3.5 inches.

(C) Metal pipe support of over 2 inches in diameter.

(D) Other metal supports deemed to be a hazard by the appropriate Department Region Director or an authorized representative.



(e) Special limitations. All encroachments on state highway, including permits issued for special encroachment, are subject to the following conditions and limitations:

(i) Red or reddish colored lights. Red or reddish colored decorations or advertising lights are prohibited~~[not permitted]~~ within the right-of-way.

(ii) Clearance over highway surface. Any decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item placed within the right-of-way must have a minimum vertical clearance of 20 feet.

(iii) Utility poles. ~~[Attach n]~~No decorations, displays, flags, banners, colored lights, handbills, structures or other advertising or decoration items may be attached to a utility facility without written permission of the appropriate entity or owner.

(iv) Highway control obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may block the normal view of any official highway sign or other traffic control device and signals.

(v) Shapes similar to highway control devices. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may be of such shape, size, color or design similar to any Department traffic control sign, signal, marking or device.

(vi) Attachments to traffic signals. No attachments of any type may be allowed on traffic signals.

(vii) Sight obstructions. No decoration, display, flag, banner, colored light, handbill, structure or other advertising or decoration item may obstruct the normal view of traffic nor may obstruct, impede or endanger the normal flow of traffic. In accordance with Utah Code Section 41-6a-216 "Removal of plants or other obstructions impairing view, Notice to owner - Penalty," owners of real property next to state highway rights-of-way shall be ordered to remove any trees, plants, shrubs, or any other obstructions that obstruct the view of motorists and thereby constitute a hazard.

(3) Department changes to existing access.

(a) The Department may, when necessary for the improved safety and operation of the roadway, rebuild, modify, remove, or relocate any access or redesign the highway including any auxiliary lane and allowable turning movement.

(i) The Department shall notify the permittee or current property owner of the change.

(ii) Changes in roadway median design that may affect turning movements normally does not require a hearing because a conditional access permit~~[grant of access]~~ approval confers no private rights to the permittee regarding the control of highway design or traffic operation even when that design affects access turning movements.

(iii) In order to eliminate public road access, a study shall be made in conjunction with local authorities for a feasibility of dead ending or rerouting of intersecting roads.

(4) Permittee requirements and limitations.

(a) Conditional access permit~~[Grant of access]~~ limitations. An approved conditional access permit~~[The granting of an access approval]~~ conveys no rights, title, or interest in state highway rights-of-way to the permittee or property served. A conditional access permit~~[grant of access]~~ for direct access to a state highway does not entitle the permittee to control or have any rights or interests in any portion of the design, specifications or operation of the highway or roadway, including those portions of the highway built

pursuant to the terms, conditions and limitations of the conditional access permit~~[grant of access]~~.

(b) Completion requirements. Prior to using the access, the permittee is required to complete the construction according to the terms, conditions and limitations of the conditional access permit~~[grant of access]~~ and required encroachment permit. Department approval is required if the permittee wishes to use the access prior to completion.

(c) Access transferability and maintenance. The permittee, his or her heirs, successors-in-interest, assigns, and occupants of the property serviced by the access is responsible for meeting the terms, conditions and limitations of the permit, including, but not limited to the following maintenance requirements:

(i) Ensuring that the use of the access to the property is not in violation of this rule and terms, conditions and limitations of the permit.

(ii) Repairing and maintaining the access beyond the edge of the roadway, including any cattle guard and gate.

(iii) Removing or clearing snow or ice upon the access, including snow or ice deposited on the access in the course of Department snow removal operations.

(iv) Repairing and replacing any access-related features within the right-of-way, including culverts. Any significant repairs, such as culvert replacement, resurfacing, or changes in design or specifications requires authorization from the Department.

(d) Notification of changes. The permittee shall contact the Department if changes are made or will be made in the use of the property which would affect access operation, traffic volume, or vehicle type to determine if a new conditional access permit~~[grant of access and]~~ is required~~[or modifications to the access approval are required.]~~

(e) Indemnification requirements. Permittees must~~[shall]~~, at all times, indemnify and hold harmless the Department, its employees and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, operation, or use of an access or other facility.

(f) Insurance, bonding and letter of credit requirements. The permittee is responsible for the maintenance of the construction performed within the state highway right-of-way for a period of three years from the date of beginning work or two years from the end of work, whichever provides the longer period of coverage.

(i) Insurance. Permittee is required to maintain minimum liability insurance as specified in Utah Administrative Code R930-7-6~~[have in force a liability insurance policy, naming the Department as an additional insured in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. Failure to meet this requirement for the life of the permit shall result in permit revocation.]~~

(ii) Bonding. As authorized by Utah Code Subsection 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a performance and warranty or maintenance bond, using the Department's approved bond form as specified in Utah Administrative Code R930-7-6~~[, for a period of three years from the date of beginning of work or two years from the end of work, whichever provides the longer period of coverage. A performance and warranty bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms, conditions and limitations of previous permits issued as determined~~

by the Department. The amount of the bond is determined by the Department Region Permits Officer based on the scope of work being performed but will not be less than \$10,000.00.]

(iii) Proceeds Against Bond. The Department may proceed against the bond to recover all expenses incurred if payment is not received from the permittee within (45) forty-five calendar days of receiving an invoice. Upon discovery of permittee caused damage to the highway or to the right-of-way[right of way], the Department may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right-of-way[right of way] due to permittee caused damages. Failure by the permittee to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the closure of the access to from the state highway right-of-way[right of way].

(iv) Letter of credit. For small projects, the Department may accept an irrevocable letter of credit as reasonable security in lieu of bonding. A letter of credit shall be issued by a federally insured bank authorized to do business in Utah and shall be placed in the possession of and payable upon demand only to the Department. A letter of credit shall be irrevocable during its terms and shall be automatically renewable, or the applicant shall insure continuous coverage by replacing letters of credit, if necessary, at least (30) thirty days before the[is] expiration date with other acceptable bond types or letters of credit.

(5) Existing interests.

(a) Historical interest. The Department recognizes that pre-existing property interests within the state highway rights-of-way may exist. Proof of a pre-existing property interest within a public right-of-way must be provided to the Department in the form of a duly executed deed, grant or other document establishing the same are required to establish prior right or title of the entity or person. In the absence of such proof, it shall be assumed that the entity or person occupies the right-of-way under permit (i.e., by permission), and enjoys no vested interest in the state highway right-of-way. In those instances when the Department requires an entity or person with a pre-existing property interest to move completely or partially off the right-of-way, the Department shall make appropriate remuneration for the relinquishment of that interest.

(i) The adoption of this rule by the Department does not constitute an acceptance or recognition of pre-existing property interests.

(ii) The Department assumes no liability associated with these interests and uses; either for the safety to users or the traveling public, damage to property, or for the continued use thereof.

(b) Parcel division. No additional access rights may accrue upon the splitting or dividing of existing parcels of land or contiguous parcels under or previously under the same ownership or controlling interest.

(c) Permittee improvement of existing access. The property owner or authorized representative served by a lawful access may make physical improvements to the access per the requirements of this rule and only with the written permission of the Department. Denial of the application for improvements does not constitute revocation of the existing access authorization. Denial of an application to enlarge, relocate, or modify an existing lawful access, in no way impairs the permit for or right to the existing access for its legal historical use.

**[R930-6-11. Enforcement.**

~~\_\_\_\_\_ (1) Access violations enforcement.~~

~~\_\_\_\_\_ (a) The Department may install barriers across or remove any access that it determines to be unlawful. Costs incurred by the Department to install barriers or remove access must be reimbursed by the permittee before the access is restored.~~

~~\_\_\_\_\_ (b) When an access is constructed or used in violation of this rule, the Department may suspend an access approval and immediately order closure of the access. Costs incurred by the Department in closing an access shall be reimbursed by the permittee.~~

~~\_\_\_\_\_ (c) When an access is constructed without prior grant of access, the Department may impose a fine or fee. The Department may order immediate closure of the access. The offender shall reimburse costs incurred by the Department in closing an access.~~

~~\_\_\_\_\_ (d) Upon detection of unauthorized modifications to limited-access lines, the Department shall contact the property owner and require the owner to restore the state highway right-of-way, including, but not limited to, any damaged fences.~~

~~\_\_\_\_\_ (e) Highways with limited access control may be marked by the Department with public property plates on fences at sufficient intervals to clearly indicate to maintenance personnel the limits of access control.~~

~~\_\_\_\_\_ (2) Permit violations enforcement.~~

~~\_\_\_\_\_ (a) Abuse or noncompliance of a grant of access or encroachment permit shall be subject to enforcement through fine and corrective measures.~~

~~\_\_\_\_\_ (b) Failure by the permittee to abide by all permit terms, conditions and limitations is sufficient cause for the Department to initiate action to suspend or revoke the permit and close the access. The Department may suspend the permit for cause if it determines failure to comply with or complete the construction requirements of the permit create a highway safety hazard. The Department may order a halt to any unauthorized use of the access pursuant to statutory and regulatory powers. Reconstruction or improvement of the access may be required when the permittee has failed to meet required specifications of design or materials.~~

~~\_\_\_\_\_ (c) Failure of the permittee to pay the Department for costs related to the Department's installation or relocation of traffic control devices within a reasonable period may be considered grounds for permit suspension that may lead to revocation and access removal.]~~

**R930-6-11. Progressive Corrective Action Process for Permit-Related Violations, Notification Protocols, Mitigation Plan Requirements, Related Fees, Informal Administrative Appeal Hearings, and Matters Related Thereto.**

(1) This section prescribes the progressive process within which the Department may set about remedying identified safety hazards, or other permit-related violations, arising out of permits issued under the Statewide Utility & Encroachment Permitting Program. It also details the informal administrative appeals process relating to this rule and other matters germane to this section including Conditional Access Permit and Variance appeals. The corrective action process shall be applied as necessary as determined by the Department. All persons, firms, and corporations legally authorized to work within the State right-of-way must

exercise a level of care and compliance that continuously reflects a responsible attitude towards complying with all permit requirements and applicable rules and statutes.

(a) Verbal Warning: A verbal warning may be given to correct a minor safety, or other permit-related violation if the violation is:

(i) immediately correctable and;

(ii) not a repeat, or recurring violation, previously encountered with the same permittee or entity working in the right-of-way.

(b) Written Notice of Violation: A written Notice of Violation shall be given anytime an identified violation:

(i) is a repeat minor safety issue; or

(ii) was subject to a previous verbal warning for the same minor violation by the same permittee or entity performing work within the right-of-way

(c) Stop Work Order:

(i) An immediate Stop Work Order shall be issued when an identified permit or law violation results in, or contributes towards, an onsite injury or vehicle accident; or if, solely in the Department's determination, allowing the activity to continue without additional project planning and review may result in unacceptable mobility delays, or if there is belief that allowing the activity to continue creates an unacceptable safety risk due to either known, or unknown factors.

(ii) An immediate Stop Work Order may be issued any time after two (2) or more Notices of Violation have been issued to the same permittee, contractor, or subcontractor for the same or similar violation within any twelve (12) month period; or anytime unauthorized (unpermitted) work is being conducted within the State right-of-way.

(iii) Any person who commits an act prohibited by Utah Code section 72-7-102(2) after the Department has issued a Stop Work Order under this subsection R930-6-11(1)(c) is subject to prosecution for a class B misdemeanor pursuant to Utah Code section 72-7-102(7).

(iv) The Department may install physical barriers to prevent unauthorized work within the State right-of-way or take any other action that is deemed necessary to stop unauthorized use. Any costs relating to enforcement activities and any cost required to restore the State right-of-way to the before condition shall be paid by the person, firm, or corporation responsible for the unlawful use of the State right-of-way. This includes, but is not limited to, any person, firm, or corporation that hires a contractor or subcontractor to perform the work as well as the individual(s) or entity conducting the work.

(d) Permit Revocations, Suspensions, and Debarment: The Department may revoke already issued permits, suspend issuance of future permits, and seek debarment for cause when the permittee or other party has:

(i) demonstrated recurring permit-related violations;

(ii) failed to voluntarily and timely correct an identified permit-related violation;

(iii) commenced work activity within the State right-of-way without first acquiring a required permit;

(iv) failed or refused to comply with a Stop Work Order;

(v) failed to render timely payment for any authorized, or incurred, permit-related fees.

(vi) Such revocations, suspensions, or debarment may be time-limited for a period up to three years.

(2) UDOT permit violation notification protocols.

(a) The Department may notify any interested third-party utility owners relating to contracted permit work, including utility owners when permitted work is authorized under a Statewide Utility License Agreement, anytime a contractor or subcontractor receives a Notice of Violation or is subject to additional corrective action(s) beyond the Notice of Violation stage of the corrective action process.

(i) Such notifications may be made in writing (email) or;

(ii) Through a direct meeting with any combination of interested parties.

(b) All corrective action processes exercised by the Department, beyond the Verbal Warning stage, shall consist of a written notice being issued in the field at the time the violation is first identified.

(i) A copy of said notification shall also be mailed or emailed to the permittee identified on the corresponding permit record (if available) and;

(ii) If an identifiable permittee, contractor, or subcontractor is not available at the worksite location when a permit violation is identified, the Department shall post a copy of said notification in a conspicuous place at the worksite and record photographs of the posting.

(3) Mitigation plan and reinstatement requirements. Any person, firm, or corporation that has been subject to a Stop Work shall submit a comprehensive written mitigation plan before the Department may consider restoring any privileges to work within the State's right-of-way.

(a) Timing. Any person, firm, or corporation wishing to submit a written mitigation plan must do so within one calendar week from the date the Stop Work Order was issued.

(b) Mitigation plan contents. The mitigation plan shall contain:

(i) a clear summary of all corrective action steps being taken to prevent, eliminate, or minimize the identified violation(s) from recurring;

(ii) a statement regarding how each corrective action step will be implemented;

(iii) a clear timeline indicating when each corrective action step will be completed; and

(iv) any other information that may aid the Department in making an informed decision on behalf of the affected party.

(c) Department review of mitigation plan. The Department shall review any submitted mitigation plan and render a determination as to whether or not the proposed remedies are sufficient to warrant consideration for the affected party to lawfully re-enter the State right-of-way on a limited, full-scale, or other basis. The Department may accept the plan as written, accept the plan with modifications, or reject the plan altogether.

(d) Required reinstatement and violation fees. Where the Department has determined a mitigation plan is acceptable, before any new permits are issued and before any work is continued on any previously issued permits, the affected party must render any appropriate reinstatement fee and/or violation fee as listed within the Department's authorized fee schedule.

(4) Informal Administrative Appeal Options for all permit or variance Denials, Revocations, Suspensions, or Debarments.

(a) The permittee, contractor, subcontractor, or other identified interested party, affected by a permit or variance Denial, Revocation, Suspension, or Debarment may file a timely informal appeal using the Department's online appeal form.

(i) Instructions on the informal appeal process will be made available with all permit or variance Denials, Revocations, Suspensions, or Debarments.

(ii) Any appeal of Department action must comply with R907-1, and Utah Code Title 63G Chapter 4, Administrative Procedures Act including receipt of appeal within 30 calendar days of the Department's action.

(b) Designation of Presiding Officer. Per Utah Code Section 63G-4-103(1)(h)(i), the assigned Statewide Program Administrator is the Department's Presiding Officer for purposes of signing any Notices of Agency Action that leads to any Revocations, Suspensions, or Debarments under this section.

(c) UDOT Hearing Officer assignment determination.

(i) Single Region Appeal: For corrective actions, or denials, affecting permits in a single UDOT Region, the appropriate Region Director shall act as the Department's Hearing Officer.

(ii) Multi-Region Appeal: For corrective actions, or denials, affecting permits in multiple UDOT Regions, the Executive Director's designee shall act as the Department's Hearing Officer.

(d) Legal representation for UDOT Hearing Officers.

(e) All Department hearing officers shall be assisted by a designated State of Utah Assistant Attorney General during the hearing and drafting of the final order.

**KEY: access control, permits**

**Date of Enactment or Last Substantive Amendment:** [~~March 9, 2013~~2019]

**Notice of Continuation:** November 2, 2016

**Authorizing, and Implemented or Interpreted Law:** 41-6a-216; 41-6a-1701; 72-1-102(11); 72-1-201; 72-3-109; 72-4-102.5; 72-6-117; 72-7-102; 72-7-103; 72-7-104; 72-7-105; 72-7-503

## Utah Board of Trustees, Administration

### R945-1

## UTech Scholarship

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43617

FILED: 04/01/2019

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 94, Technical College Scholarship Amendments, was passed during the 2019 General Session. The bill amended the scholarship eligibility period from 7 to 12 months.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the scholarship eligibility period from 7 to 12 months.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-2a-116

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This has ongoing fiscal cost of \$800,000 to the state budget per year. This rule is anticipated to have inestimable savings to the state budget because tax revenue returned by future income of scholarship recipients cannot be calculated.

◆ LOCAL GOVERNMENTS: This amendment is not anticipated to have a cost or savings to local governments because this rule deals with scholarships awarded to students by technical colleges within the Utah System of Technical Colleges and does not require any expenditures of or generate any revenues for local governments.

◆ SMALL BUSINESSES: This amendment is not anticipated to have a cost or savings to small businesses because this rule deals with scholarships awarded to students by technical colleges within the Utah System of Technical Colleges and does not require any expenditures of or generate any revenues for small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment is anticipated to have an inestimable benefit to persons who receive the scholarship. The benefit is inestimable because the scholarship amount that will be awarded to each recipient will vary according to available funding and the parameters set forth in this rule, and because personal income derived from employment resulting from education funded by the scholarship cannot be calculated. Otherwise, this change is not anticipated to have a cost or savings to other persons because this rule deals with scholarships awarded to students by technical colleges within the Utah System of Technical Colleges and does not require any expenditures of or generate any revenues for 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: This amendment will not result in a direct fiscal impact to businesses. This rule deals with scholarships awarded to students by technical colleges within the Utah System of Technical Colleges, and does not require any expenditures of or generate any revenues for small businesses. Businesses may experience an indirect impact through the employment and productivity of individuals trained under the scholarship.

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

UTECH BOARD OF TRUSTEES  
ADMINISTRATION  
310 SOUTH MAIN STREET, SUITE 1250  
SALT LAKE CITY, UT 84101  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kim Ziebarth by phone at 801-341-6010, or by Internet E-mail at kziebarth@utech.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Jared Haines, Associate Commissioner

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$800,000	\$800,000	\$800,000
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>\$800,000</b>	<b>\$800,000</b>	<b>\$800,000</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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There is no anticipated impact or benefit to non-small businesses.

The Interim Commissioner, Jared Haines, has reviewed and approved this fiscal analysis.

**R945. UTech Board of Trustees, Administration.**

**R945-1. UTech Technical College Scholarship.**

**R945-1-1. Purpose and Authority.**

(1) The purpose of this rule is to establish requirements related to the technical college scholarships described in Section 53B-2a-116, including a college's administration of the scholarships, student eligibility and priority, application processes, and determination of satisfactory progress.

(2) This rule is authorized and directed by Subsection 53B-2a-116(6).

**R945-1-2. Definitions.**

As used in this rule:

(1) "Career and Technical Education Pathway" means:

(a) For a technical college, a certificate-granting program approved in accordance with Utah System of Technical Colleges ([USTC]UTech) policy;

(b) For an institution of higher education, a program approved in accordance with State Board of Regents policy that leads to a certificate and/or associate degree and that prepares students for an occupation; or

(c) For a school district or charter school, a sequence of courses that leads to a secondary school credential of labor market value approved by the State Board of Education.

(2) "Deferral" means the carrying forward of a UTech Scholarship, as described in Subsection R945-1-6(4).

(3) "Graduate from High School" means to qualify for a high school diploma as specified in Subsection R277-705-2(3).

(4) "High Demand Program" means the same as that term is defined in Subsection 53B-2a-116(1)(a).

(5) "Institution of Higher Education" means an institution within the Utah System of Higher Education described in Subsection 53B-1-102(1)(a).

(6) "Satisfactory Progress" means completion of any course, as included in an official transcript from the provider of a career and technical education pathway, that is specific to a career and technical education pathway discipline. Courses in a career and technical education pathway that are not specific to a pathway discipline, such as general education courses, are not eligible.

(7) "Secondary School" means grades 7-12 in whatever kind of school the grade levels exist, as provided in Subsection R277-705-2(5).

(8) "Technical College" means an institution within the Utah System of Technical Colleges described in Section 53B-2a-105.

(9) "Underserved Population" means any individual of ethnic or racial minority status; any individual with a disability; any individual identified as a displaced homemaker, single parent, economically disadvantaged, or of limited English proficiency under Carl D. Perkins Grant reporting procedures; or any individual receiving Pell Grant, Bureau of Indian Affairs, or Department of Workforce Services benefits.

(10) "UTech Scholarship" means a financial award provided by a technical college in accordance with Section 53B-2a-116 and this rule to a student enrolled in a technical college.

**R945-1-3. Award Requirements.**

To receive a UTech Scholarship, an applicant shall satisfy the following criteria:

- (1) Graduate from high school within the [seven]12 months prior to receiving a scholarship;
- (2) Enroll in, or show intent to enroll in, a high demand program at a technical college within the [seven]12 months after high school graduation, except as granted in a deferral; and
- (3) While enrolled in a secondary school, make satisfactory progress in a career and technical education pathway offered by a technical college, an institution of higher education, or a school district or charter school.

**R945-1-4. Application Process.**

The process for an individual to apply to a technical college to receive a UTech Scholarship shall be administered by the technical college, and shall include the following:

- (1) College Application: The technical college shall provide an application form, process, and instructions which include the elements provided in this rule, and which may be integrated with other scholarship application forms and processes administered by the college.
- (2) UTech Scholarship Specificity: In its application forms and processes, the technical college shall clearly identify the UTech Scholarship's name, award requirements, use, and application process, and shall provide for the applicant to specify that the applicant is applying to be considered for the UTech Scholarship.
- (3) Application Deadline: The technical college shall establish deadlines for submission of applications in accordance with the college's scholarship application processes.
- (4) Required Documentation: The technical college shall require and retain the following information from each applicant in its application forms and accompanying documents:
  - (a) Identity and contact information consistent with the college's regular scholarship applications, such as name, address, and date of birth.
  - (b) Application date.
  - (c) UTech Scholarship specificity as described in Subsection R945-1-4(2).
  - (d) Demographic information to include underserved population identification.
  - (e) High school information, on transcripts or otherwise documented, to include:
    - (i) Name of high school attended;
    - (ii) Expected or actual high school graduation date; and
    - (iii) Expected or actual satisfactory progress in a career and technical education pathway offered by a technical college, an institution of higher education, or a school district or charter school.
  - (f) Technical college enrollment intentions to include:
    - (i) Name of technical college;
    - (ii) High demand program in which the student is enrolled or intends to enroll;
    - (iii) Date on which the student began or expects to begin the high demand program;
    - (iv) Intended enrollment hours per week;
    - (v) Expected program completion date; and
    - (vi) If a deferral is requested, justification for the deferral in accordance with 945-1-6(4)(a).

**R945-1-5. Determination of Scholarship Awards and Amounts.**

A technical college shall determine scholarship eligibility, prioritize selection of award recipients and the amount of each award, and grant scholarships according to the following provisions and sequence.

- (1) Determination of Eligibility: For each application deadline in Subsection R945-1-4(3), the college shall identify from the application documentation:
  - (a) Eligible Applicant: Each applicant that satisfies or is expected to satisfy all award requirements in Section R945-1-3.
  - (b) Eligible Award Period: For each eligible applicant, the period determined by:
    - (i) Start Date: The date on which the applicant expects to begin a high demand program, or, in the case of an applicant who has previously begun the intended high demand program, the day after the high school graduation date; and
    - (ii) End Date: [Seven]12 months after the high school graduation date, or, in the case of a requested deferral, [seven]12 months after the start date.
  - (c) Eligible Award Amount: For each eligible applicant, the total cost of tuition, program fees, and required textbooks projected to accrue for the high demand program in which the applicant intends to be enrolled during the eligible award period, informed by the applicant's intended enrollment hours per week.
- (2) Prioritizing and Awarding of Scholarships: The college shall award scholarships within an application deadline group as follows:
  - (a) Underserved Populations: The college shall first award a scholarship to each eligible applicant who is a member of an underserved population, in the amount provided in Subsection R945-1-5(3).
  - (b) Remaining Applicants: The college shall, with any funds remaining after awarding scholarships to members of underserved populations, award scholarships to all other eligible applicants in the amounts provided in Subsection R945-1-5(3).
  - (3) Calculation of Award Amounts: The college shall determine award amounts for each scholarship recipient identified in Subsection R945-1-5(2) as follows:
    - (a) Full Eligible Award Amount: If available funds provided in Section R945-1-7 are sufficient for the total of all eligible award amounts identified in Subsection R945-1-5(1)(c) in a given priority group designated in Subsection R945-1-5(2), then each eligible applicant in the group shall be awarded 100% of the applicant's eligible award amount.
    - (b) Partial Eligible Award Amount: If available funds are less than the total of all eligible award amounts for the priority group, the available funds shall be divided by the number of eligible applicants in the group to determine the maximum award per recipient. Each eligible applicant shall be awarded up to the maximum award, not to exceed 100% of the applicant's eligible award amount. Any unobligated funds remaining for applicants awarded less than the maximum award shall be retained in the scholarship fund for future applicants.
    - (c) Unavailability of Funds: If there are no available scholarship funds remaining after awards have been determined for a higher priority group, no scholarships shall be awarded for remaining applicants.

**R945-1-6. Conditions and Utilization of Scholarship.**

(1) Eligibility Verification: Before applying funds for a scholarship awarded in Subsection R945-1-5(2) to a student, a technical college shall verify that all award requirements in Section R945-1-3 have been met by obtaining and retaining additional documentation of actual qualifications which at the time of application were expected or intended to have been met.

(2) Use of Funds: Scholarship funds may be used only for tuition, program fees, and required textbooks in a high demand program in which the recipient is enrolled, up to the recipient's award amount determined in Subsection R945-1-5(3). Funds shall be applied by the college directly to authorized costs and shall not be issued to a recipient in cash.

(3) Time Limitation: Except in the case of a granted deferral, a technical college may only apply a scholarship toward a recipient's costs described in Subsection R945-1-6(2) from the day on which the college awards the scholarship as identified in Subsection R945-1-5(2) until ~~seven~~12 months after the day on which the recipient graduates from high school.

(4) Deferral: A college may, by request from the recipient at any time before or during the recipient's award period, defer all or any portion of a scholarship for up to three years after the day on which the recipient graduates from high school.

(a) Deferrals may be granted at the discretion of the college for military service, humanitarian/religious service, documented medical reasons, or other exigent reasons.

(b) The duration of a deferred scholarship shall be for the time remaining in the recipient's award period, not to exceed ~~seven~~12 months.

(5) Cancellation: A technical college may cancel a scholarship if the recipient does not, as determined by the college:

(a) Maintain enrollment in the college on at least a half-time basis; or

(b) Make satisfactory progress toward the completion of a certificate in a high demand program.

(6) Unused Funds: Upon termination of a recipient's scholarship due to non-acceptance, completion, cancellation, or any other reason, any unused award amounts shall be removed from liability/obligated status under Subsection R945-1-7(4) and retained in the college's restricted UTech Scholarship account.

**R945-1-7. UTech Scholarship Funds.**

(1) Distribution of Award Funds: The annual distribution of UTech Scholarship award funds to technical colleges by the Board of Trustees shall be as provided in Subsection 53B-2a-116(2).

(2) Restricted Funds: UTech Scholarship funds shall be considered restricted funds by a technical college, shall be recorded only in restricted UTech Scholarship accounts, and shall be used only for scholarship recipients' tuition, program fees, and required textbooks during their award periods.

(3) Unused/Carryover Funds: Each technical college is encouraged to annually utilize all UTech Scholarship funds for qualified students. Surplus funds (i.e., fund balance or net assets) shall be retained in the restricted fund and carried over from one fiscal year to the next.

(4) Obligated Funds: The projected value of a given student's scholarship award shall be recorded as a liability from the time of the student's selection until the student's scholarship ends, and shall be regarded as utilized funds when determining unused/carryover funds. Obligated funds remaining after the student's scholarship ends shall be returned to unused/carryover funds.

**R945-1-8. Appeals.**

A technical college shall provide a process and criteria, to be referenced in application materials, by which an applicant may appeal a decision made by the college that is related to this rule, to include provision for any unresolved appeal to be submitted to the Commissioner of Technical Education for final agency action.

**R945-1-9. Reporting.**

A technical college shall submit calendar year-end data regarding its UTech Scholarships to the Office of the [~~USTC~~] Commissioner by January 15 of each year, and at other times as required by the Office of the Commissioner, to include information pertaining to the provisions of this rule with respect to applications, awards, enrollments, utilization, funding, or other information as directed by the Commissioner.

**KEY: scholarships, technical college, career and technical education, secondary education**

**Date of Enactment or Last Substantive Amendment: [~~September 7, 2018~~2019]**

**Authorizing, and Implemented or Interpreted Law: 53B-2a-116**

**End of the Notices of Proposed 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, Consumer Protection **R152-34a** Utah Postsecondary School State Authorization Act Rule

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43612  
FILED: 04/01/2019

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is promulgated pursuant to Subsections 13-2-5(1) and 13-34a-103(2)(d). Subsection 13-2-5(1) allows the Division of Consumer Protection (Division) director to promulgate rules to administer and enforce, among others, Section 13-34a-101 et seq. Subsection 13-34a-103(2)(d) directs the Division to make rules governing: the content and form of a registration form; the filing and review procedures related to registration; the filing and review of complaints filed with the Division; denial, suspension, or revocation of a certificate of postsecondary school state authorization; and enforcement of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has received no written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule creates the procedure by which postsecondary schools apply for postsecondary school state authorization, and specifies the information that must be provided with an application. This rule also creates the procedure a person must follow to file a complaint against a postsecondary school that holds a certificate of state authorization. Finally, this rule details standards a postsecondary school must meet, explains when and how the Division may investigate a postsecondary school, and explains the consequences of a postsecondary school's failure to comply with this rule or Section 13-34a-101 et seq. In sum, this rule provides guidance and certainty to postsecondary schools that seek to obtain or maintain state authorization, and also protects consumers by requiring postsecondary schools to meet basic financial and record-keeping standards. Therefore, this rule should be continued.

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

COMMERCE  
CONSUMER PROTECTION  
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:

◆ Daniel Larsen by phone at 801-530-6145, or by Internet E-mail at [dblarsen@utah.gov](mailto:dblarsen@utah.gov)

AUTHORIZED BY: Daniel O'Bannon, Director

EFFECTIVE: 04/01/2019

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Corrections, Administration  
**R251-111**

Government Records Access and  
Management

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43596  
FILED: 03/19/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 63A-12-104(2), and Sections 63G-2-204, 64-13-10, 46-4-501, and 46-4-502.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide procedures for access to government records of the Department of Corrections and to facilitate intergovernmental, cross-boundary intercooperation. Therefore, this rule should be continued.

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:  
♦ Lucy Ramirez by phone at 801-545-5616, or by Internet E-mail at lramirez@utah.gov

AUTHORIZED BY: Michael Haddon, Executive Director

EFFECTIVE: 03/19/2019

Education, Administration  
**R277-601**

Standards for Utah School Buses and  
Operations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43611  
FILED: 03/29/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of the public education in the State Board of Education (Board), Subsection 53E-3-501(1)(d) which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs, and Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-601 continues to be necessary because this rule is to specify standards for state student transportation funds, school buses, and school bus drivers utilized by school districts. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

EFFECTIVE: 03/29/2019

Health, Family Health and Preparedness, Licensing  
**R432-13**  
Freestanding Ambulatory Surgical Center Construction Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 43598  
FILED: 03/21/2019

**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 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. There are 46 freestanding ambulatory surgical centers in Utah. The Department of Health agrees with the need to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
LICENSING  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/21/2019

Health, Family Health and Preparedness, Licensing  
**R432-14**  
Birthing Center Construction Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 43599  
FILED: 03/21/2019

**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 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. There are 6 birthing centers in Utah. The Department of Health agrees with the need to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
LICENSING  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/21/2019

Health, Family Health and Preparedness, Licensing  
**R432-30**  
Adjudicative Procedure

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43597  
FILED: 03/21/2019

**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 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department of Health (Department) licenses 983 health care agencies/facilities in Utah. The Department agrees with the need to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/21/2019

Health, Family Health and Preparedness, Licensing  
**R432-32**  
Licensing Exemption for Non-Profit Volunteer End-of-Life Care

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43614  
FILED: 04/01/2019

**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 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the exemption from licensure requirements for non-profit facilities that provide volunteer end-of-life care pursuant to Subsection 26-21-7(6). The Department of Health agrees with the need to continue this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 04/01/2019

Judicial Performance Evaluation  
Commission, Administration  
**R597-4**  
Justice Courts

Lieutenant Governor, Administration  
**R622-2**  
Use of the Great Seal of the State of  
Utah

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43601  
FILED: 03/22/2019

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43595  
FILED: 03/19/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted and authorized by Sections 78A-12-201 through 78A-12-206, which specifically address the Judicial Performance Evaluation Commission Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Great Seal of the State of Utah is a symbol of the sovereignty of this state, and its use denotes authenticity of official state government functions and authority. The Great Seal is comprised in form and content as described in Section 67-1a-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received during and since the last five-year review of this rule from interested persons supporting or opposing the rule.

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 has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is enacted and required by Sections 78A-12-201 through 78A-12-206. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Since its conception, the seal has been employed for specific governmental applications within the state's Executive, Legislative, and Judicial branches; and is still needed. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
LIEUTENANT GOVERNOR  
ADMINISTRATION  
ROOM 220 STATE CAPITOL  
350 N STATE ST  
SALT LAKE CITY, UT 84114-2325  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jennifer Yim by phone at 801-538-1652, or by Internet E-mail at [jjim@utah.gov](mailto:jjim@utah.gov)

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jennifer Storie by phone at 801-538-1746, or by Internet E-mail at [jenstorie@utah.gov](mailto:jenstorie@utah.gov)

AUTHORIZED BY: David Roth, Chair

AUTHORIZED BY: Justin Lee, Director

EFFECTIVE: 03/22/2019

EFFECTIVE: 03/19/2019

**Public Safety, Driver License  
R708-22  
Commercial Driver License  
Administrative Proceedings**

**Public Safety, Driver License  
R708-24  
Renewal of a Commercial Driver  
License (CDL)**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43606  
FILED: 03/28/2019

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43607  
FILED: 03/28/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 53-3-104, which requires the Division of Driver License (Division) to establish rules related to the application and licensing of commercial drivers in the state of Utah. This rule is enacted pursuant to Section 63G-4-102, which allows for an agency to enact rules governing an adjudicative proceeding.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 53-3-104, which requires the Division of Driver License (Division) to establish rules for examining applicants for a license, as necessary for the safety and welfare of the driving public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments regarding this rule since the last five-year review of the rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division has not received any written comments regarding this rule since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary in order to outline the processes for conducting administrative proceedings with regards to application and licensing of commercial drivers. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes safety standards for commercial driver license holders, and outlines the specific requirements a commercial driver license applicant must meet to obtain or renew their driving privilege. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY, UT 84119-5595  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY, UT 84119-5595  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

AUTHORIZED BY: Chris Caras, Director

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 03/28/2019

EFFECTIVE: 03/28/2019

**Regents (Board of), Salt Lake  
Community College  
R784-1  
Government Records Access and  
Management Act Rules**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43594

FILED: 03/19/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Section 63A-12-104, and Section 63G-2-101 et seq.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The college receives 20 to 30 GRAMA requests per fiscal year. A rule for responding is needed. Therefore, this rule should be continued. (EDITOR'S NOTE: The agency's intent was to file this review before the deadline. A miscommunication between the agency and staff of the Office of Administrative Rules prevented filing the review; the agency was waiting for action from the office. Because the deadline was missed through no fault of the agency, the review is filed today with an effective date of 03/17/2019, which was the original deadline date.)

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

REGENTS (BOARD OF)  
SALT LAKE COMMUNITY COLLEGE  
ROOM AD150  
JAY L NELSON ADMINISTRATION BLDG  
4600 S REDWOOD RD  
TAYLORSVILLE, UT 84123  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Chad Lambourne by Internet E-mail at [chad.lambourne@slcc.edu](mailto:chad.lambourne@slcc.edu)

AUTHORIZED BY: Chad Lambourne, Policy Coordinator

EFFECTIVE: 03/19/2019

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**End of the Five-Year Notices of Review and Statements of Continuation 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

### Commerce

Occupational and Professional Licensing  
No. 43189 (AMD): R156-28. Veterinary Practice Act Rule  
Published: 10/01/2018  
Effective: 03/25/2019

No. 43189 (CPR): R156-28. Veterinary Practice Act Rule  
Published: 02/15/2019  
Effective: 03/25/2019

### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 43473 (AMD): R414-515. Long Term Acute Care  
Published: 02/01/2019  
Effective: 03/21/2019

No. 43483 (AMD): R414-516. Nursing Facility Non-State  
Government-Owned Upper Payment Limit Quality  
Improvement Program  
Published: 02/01/2019  
Effective: 03/21/2019

### Insurance

Administration  
No. 43485 (AMD): R590-102-21. Dedicated Fees  
Published: 02/15/2019  
Effective: 03/26/2019

### Natural Resources

Parks and Recreation  
No. 43497 (AMD): R651-206. Carrying Passengers for Hire  
Published: 02/15/2019  
Effective: 03/25/2019

Forestry, Fire and State Lands  
No. 43480 (AMD): R652-70. Sovereign Lands  
Published: 02/01/2019  
Effective: 03/25/2019

### Wildlife Resources

No. 43491 (AMD): R657-22. Commercial Hunting Areas  
Published: 02/15/2019  
Effective: 03/25/2019

No. 43492 (AMD): R657-33. Taking Bear  
Published: 02/15/2019  
Effective: 03/25/2019

### Tax Commission

Property Tax  
No. 43437 (AMD): R884-24P-19. Appraiser Designation  
Program Pursuant to Utah Code Ann. Sections 59-2-701 and  
59-2-702  
Published: 01/01/2019  
Effective: 03/28/2019

No. 43438 (AMD): R884-24P-74. Changes to Jurisdiction of  
Mining Claims Pursuant to Utah Code Ann. Section 59-2-201  
Published: 01/01/2019  
Effective: 03/28/2019

NOTICES OF RULE EFFECTIVE DATES

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Transportation

Administration

No. 43490 (R&R): R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects

Published: 02/15/2019

Effective: 03/26/2019

Operations, Maintenance

No. 43489 (AMD): R918-4. Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs

Published: 02/15/2019

Effective: 03/26/2019

Workforce Services

Employment Development

No. 43481 (AMD): R986-100-117. Disqualification Periods And Civil Penalties For Intentional Program Violations (IPVs)

Published: 02/01/2019

Effective: 06/01/2019

No. 43482 (AMD): R986-200-250. Unauthorized Spending of TANF Financial Assistance Benefits

Published: 02/01/2019

Effective: 06/01/2019

**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, 2019 through April 01, 2019. 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>Facilities Construction and Management</u>					
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43524	NSC	03/01/2019	Not Printed
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43569	5YR	03/06/2019	2019-7/59
R23-29	Delegation of Project Management	43525	NSC	03/01/2019	Not Printed
R23-29	Delegation of Project Management	43567	5YR	03/06/2019	2019-7/60
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	43568	5YR	03/06/2019	2019-7/60
<u>Finance</u>					
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	43471	5YR	01/07/2019	2019-3/43
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2
<b>AGRICULTURE AND FOOD</b>					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	43469	5YR	01/07/2019	2019-3/43
<u>Marketing and Development</u>					
R65-1	Utah Apple Marketing Order	43546	NSC	03/13/2019	Not Printed
R65-5	Utah Red Tart and Sour Cherry Marketing Order	43547	NSC	03/13/2019	Not Printed
R65-8	Management of the Junior Livestock Show Appropriation	43545	NSC	03/13/2019	Not Printed
R65-11	Utah Sheep Marketing Order	43548	NSC	03/13/2019	Not Printed
R65-12	Utah Small Grains and Oilseeds Marketing Order	43549	NSC	03/13/2019	Not Printed
<u>Plant Industry</u>					
R68-25	Industrial Hemp Research Pilot Program for Processors	43571	NSC	03/21/2019	Not Printed

COMMERCE

Consumer Protection

R152-34a Utah Postsecondary School State Authorization Act Rule 43612 5YR 04/01/2019 Not Printed

Occupational and Professional Licensing

R156-20a (Changed to Environmental Health Scientist Act Rule 43466 NSC 01/11/2019 Not Printed  
 R156-20b)  
 R156-28 Veterinary Practice Act Rule 43189 AMD 03/25/2019 2018-19/7  
 R156-28 Veterinary Practice Act Rule 43189 CPR 03/25/2019 2019-4/40  
 R156-60 Mental Health Professional Practice Act Rule 43543 5YR 02/26/2019 2019-6/41  
 R156-80a Medical Language Interpreter Act Rule 43465 5YR 01/02/2019 2019-2/19

Real Estate

R162-2f Real Estate Licensing and Practices Rules 43407 AMD 01/23/2019 2018-24/8

CORRECTIONS

Administration

R251-105 Applicant Qualifications for Employment with Department of Corrections 43218 AMD 02/11/2019 2018-20/12  
 R251-111 Government Records Access and Management 43596 5YR 03/19/2019 Not Printed

EDUCATION

Administration

R277-100 Definitions for Utah State Board of Education (Board) Rules 43479 AMD 03/13/2019 2019-3/2  
 R277-122 Board of Education Procurement 43441 AMD 02/07/2019 2019-1/17  
 R277-308 New Educator Induction and Mentoring 43442 NEW 02/07/2019 2019-1/22  
 R277-400 School Facility Emergency and Safety 43507 5YR 02/08/2019 2019-5/95  
 R277-404 Requirements for Assessments of Student Achievement 43450 AMD 02/22/2019 2019-2/6  
 R277-419 Pupil Accounting 43475 NSC 01/15/2019 Not Printed  
 R277-437 Student Enrollment Options 43397 AMD 01/09/2019 2018-23/6  
 R277-470 Charter Schools - General Provisions 43374 REP 01/09/2019 2018-23/9  
 R277-481 Charter School Oversight, Monitoring and Appeals 43399 REP 01/09/2019 2018-23/12  
 R277-482 Charter School Timelines and Approval Processes 43392 REP 01/09/2019 2018-23/15  
 R277-486 Professional Staff Cost Program 43508 5YR 02/08/2019 2019-5/95  
 R277-487 Public School Data Confidentiality and Disclosure 43476 AMD 03/13/2019 2019-3/4  
 R277-494-4 Charter or Online School Student Participation in Co-Curricular Activities 43506 NSC 02/20/2019 Not Printed  
 R277-502-4 License Levels, Procedures, and Periods of Validity 43600 NSC 04/01/2019 Not Printed  
 R277-509 Licensure of Student Teachers and Interns 43373 AMD 01/09/2019 2018-23/19  
 R277-524 Paraprofessional/Paraeducator Programs, Assignments, and Qualifications 43583 5YR 03/14/2019 2019-7/61  
 R277-528 Use of Public Education Job Enhancement Program (PEJEP) Funds 43509 5YR 02/08/2019 2019-5/96  
 R277-550 Charter Schools – Definitions 43400 NEW 01/09/2019 2018-23/21  
 R277-551 Charter Schools - General Provisions 43393 NEW 01/09/2019 2018-23/24  
 R277-551 Charter Schools - General Provisions 43478 AMD 03/13/2019 2019-3/10  
 R277-552 Charter School Timelines and Approval Processes 43394 NEW 01/09/2019 2018-23/26  
 R277-553 Charter School Oversight, Monitoring and Appeals 43401 NEW 01/09/2019 2018-23/31  
 R277-554 State Charter School Board Grants and Mentoring Program 43395 NEW 01/09/2019 2018-23/34  
 R277-555 Corrective Action Against Charter School Authorizers 43396 NEW 01/09/2019 2018-23/38  
 R277-600 Student Transportation Standards and Procedures 43375 AMD 01/09/2019 2018-23/38

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R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	43579	5YR	03/13/2019	2019-7/61
R277-910	Underage Drinking Prevention Program	43448	NEW	02/07/2019	2019-1/24
R277-912	Law Enforcement Related Incident Reporting	43439	NEW	02/07/2019	2019-1/26
R277-922	Digital Teaching and Learning Grant Program	43398	AMD	01/09/2019	2018-23/45

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R307-101-2	Definitions	43372	AMD	02/07/2019	2018-23/49
R307-110-10	Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter	43212	AMD	03/05/2019	2018-19/31
R307-110-10	Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter	43212	CPR	03/05/2019	2019-3/40
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	AMD	01/03/2019	2018-13/35
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	CPR	01/03/2019	2018-21/134
R307-511	Oil and Gas Industry: Associated Gas Flaring	43211	NEW	03/05/2019	2018-19/32
R307-511	Oil and Gas Industry: Associated Gas Flaring	43211	CPR	03/05/2019	2019-3/41

Drinking Water

R309-100-9	Variances	43378	AMD	01/15/2019	2018-23/57
R309-105-4	General	43379	AMD	01/15/2019	2018-23/58
R309-110-4	Definitions	43380	AMD	01/15/2019	2018-23/60
R309-200	Monitoring and Water Quality: Drinking Water Standards	43381	AMD	01/15/2019	2018-23/73
R309-210-8	Disinfection Byproducts - Stage 1 Requirements	43382	AMD	01/15/2019	2018-23/80
R309-211	Monitoring and Water Quality: Distribution System -- Total Coliform Requirements	43383	AMD	01/15/2019	2018-23/85
R309-215-10	Residual Disinfectant	43384	AMD	01/15/2019	2018-23/91
R309-215-16	Groundwater Rule	43385	AMD	01/15/2019	2018-23/93
R309-220-4	General Public Notification Requirements	43386	AMD	01/15/2019	2018-23/99
R309-225-4	General Requirements	43387	AMD	01/15/2019	2018-23/101

Waste Management and Radiation Control, Radiation

R313-28-31	General and Administrative Requirements	43253	AMD	01/14/2019	2018-21/52
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Waste Management and Radiation Control, Waste Management

R315-273	Standards for Universal Waste Management	43252	AMD	01/14/2019	2018-21/55
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GOVERNOR

Economic Development

R357-7	Utah Capital Investment Board	43488	EXT	01/24/2019	2019-4/47
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Energy Development (Office of)

R362-4	High Cost Infrastructure Development Tax Credit Act	43223	AMD	02/05/2019	2018-20/18
R362-5	Commercial Property Assessed Clean Energy (C-PACE) Administrative Rules	43419	NEW	01/23/2019	2018-24/15

HEALTH

Administration

R380-70	Standards for Electronic Exchange of Clinical Health Information	43487	5YR	01/24/2019	2019-4/43
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Disease Control and Prevention, Environmental Services

R392-303	Public Geothermal Pools and Bathing Places	43502	5YR	02/05/2019	2019-5/96
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Disease Control and Prevention, Health Promotion

R384-100	Cancer Reporting Rule	43540	5YR	02/25/2019	2019-6/41
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R384-200	Cancer Control Program	43539	5YR	02/25/2019	2019-6/42
R384-203	Prescription Drug Database Access	43537	5YR	02/25/2019	2019-6/42
<u>Family Health and Preparedness, Children with Special Health Care Needs</u>					
R398-5	Birth Defects Reporting	43472	AMD	03/11/2019	2019-3/18
R398-10	Autism Spectrum Disorders and Intellectual Disability Reporting	43538	5YR	02/25/2019	2019-6/43
<u>Family Health and Preparedness, Emergency Medical Services</u>					
R426-1	General Definitions	43177	AMD	01/11/2019	2018-18/15
R426-2	Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews	43178	AMD	01/11/2019	2018-18/19
R426-2-400	Emergency Medical Service Dispatch Center Minimum Designation Requirements	43260	NSC	01/11/2019	Not Printed
R426-9	Trauma and EMS System Facility Designations	43321	AMD	01/18/2019	2018-22/114
<u>Family Health and Preparedness, Licensing</u>					
R432-7	Specialty Hospital - Psychiatric Hospital Construction	43553	5YR	02/27/2019	2019-6/43
R432-8	Specialty Hospital – Chemical Dependency/Substance Abuse Construction	43559	5YR	02/28/2019	2019-6/44
R432-9	Specialty Hospital – Rehabilitation Construction Rule	43560	5YR	02/28/2019	2019-6/44
R432-10	Specialty Hospital – Long-Term Acute Care Construction Rule	43563	5YR	03/04/2019	2019-7/62
R432-11	Orthopedic Hospital Construction	43564	5YR	03/04/2019	2019-7/62
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	43565	5YR	03/04/2019	2019-7/63
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	43598	5YR	03/21/2019	Not Printed
R432-14	Birth Center Construction Rule	43599	5YR	03/21/2019	Not Printed
R432-30	Adjudicative Procedure	43597	5YR	03/21/2019	Not Printed
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	43614	5YR	04/01/2019	Not Printed
R432-270	Assisted Living Facilities	43533	5YR	02/20/2019	2019-6/45
<u>Family Health and Preparedness, Maternal and Child Health</u>					
R433-200	Family Planning Access Act	43402	NEW	03/06/2019	2018-24/18
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-61-2	Incorporation by Reference	43425	AMD	02/15/2019	2019-1/28
R414-515	Long Term Acute Care	43473	AMD	03/21/2019	2019-3/21
R414-516	Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program	43483	AMD	03/21/2019	2019-3/23
R414-520	Admission Criteria for Medically Complex Children's Waiver	43332	NEW	01/04/2019	2018-22/111
R414-521	Accountable Care Organization Hospital Report	43352	NEW	01/04/2019	2018-22/113
HUMAN RESOURCE MANAGEMENT					
<u>Administration</u>					
R477-101	Administrative Law Judge Conduct Committee	43470	5YR	01/07/2019	2019-3/44
HUMAN SERVICES					
<u>Administration</u>					
R495-882	Termination of Parental Rights	43496	5YR	02/01/2019	2019-4/43
<u>Administration, Administrative Services, Licensing</u>					
R501-1	General Provisions for Licensing	43330	AMD	01/17/2019	2018-22/119
R501-7	Child Placing Adoption Agencies	43356	AMD	02/12/2019	2018-23/105
R501-8	Outdoor Youth Programs	43234	AMD	01/17/2019	2018-21/89
R501-21	Outpatient Treatment Programs	43237	AMD	02/12/2019	2018-21/91

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Child and Family Services

R512-305	Out-of-Home Services, Transition to Adult Living Services	43358	AMD	01/09/2019	2018-23/115
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Substance Abuse and Mental Health

R523-5	Peer Support Specialist Training and Certification	43141	AMD	01/29/2019	2018-17/60
R523-5	Peer Support Specialist Training and Certification	43141	CPR	01/29/2019	2018-24/38
R523-19	Community Mental Health Crisis and Suicide Prevention Training Grant Standards	43355	NEW	01/29/2019	2018-23/118

INSURANCE

Administration

R590-102	Insurance Department Fee Payment Rule	43604	NSC	04/01/2019	Not Printed
R590-102-21	Dedicated Fees	43485	AMD	03/26/2019	2019-4/4
R590-170	Fiduciary and Trust Account Obligations	43514	5YR	02/11/2019	2019-5/97
R590-186-5	Company License Renewal	43429	AMD	02/07/2019	2019-1/31
R590-220	Submission of Accident and Health Insurance Filings	43520	5YR	02/13/2019	2019-5/98
R590-225	Submission of Property and Casualty Rate and Form Filings	43521	5YR	02/13/2019	2019-5/98
R590-226	Submission of Life Insurance Filings	43580	5YR	03/14/2019	2019-7/63
R590-227	Submission of Annuity Filings	43581	5YR	03/14/2019	2019-7/64
R590-228	Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings	43582	5YR	03/14/2019	2019-7/64
R590-252	Use of Senior-Specific Certifications and Professional Designations	43513	5YR	02/11/2019	2019-5/99
R590-268	Small Employer Stop-Loss Insurance	43570	5YR	03/07/2019	2019-7/65
R590-269	Individual Open Enrollment Period	43474	5YR	01/11/2019	2019-3/44

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration

R597-1	General Provisions	43501	5YR	02/05/2019	2019-5/100
R597-3	Judicial Performance Evaluations	43500	5YR	02/05/2019	2019-5/100
R597-4	Justice Courts	43601	5YR	03/22/2019	Not Printed

LIEUTENANT GOVERNOR

Administration

R622-2	Use of the Great Seal of the State of Utah	43595	5YR	03/19/2019	Not Printed
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Elections

R623-1	Lieutenant Governor's Procedure for Regulation of Lobbyist Activities	43493	5YR	01/28/2019	2019-4/44
R623-2	Uniform Ballot Counting Standards	43494	5YR	01/28/2019	2019-4/44
R623-3	Utah State Plan on Election Reform	43495	5YR	01/28/2019	2019-4/45
R623-5	Municipal Alternate Voting Methods Pilot Project	43275	NEW	03/01/2019	2018-21/96

MONEY MANAGEMENT COUNCIL

Administration

R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	43503	EXT	02/05/2019	2019-5/103
R628-20	Foreign Deposits for Higher Education Institutions	43504	EXT	02/05/2019	2019-5/103

NATURAL RESOURCES

Forestry, Fire and State Lands

R652-70	Sovereign Lands	43480	AMD	03/25/2019	2019-3/28
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Parks and Recreation

R651-206	Carrying Passengers for Hire	43497	AMD	03/25/2019	2019-4/7
R651-214	Temporary Registration	43464	AMD	02/21/2019	2019-2/12
R651-301	State Recreation Fiscal Assistance Programs	43416	AMD	01/24/2019	2018-24/20
R651-406	Off-Highway Vehicle Registration Fees	43415	AMD	01/24/2019	2018-24/23

Wildlife Resources

R657-5	Taking Big Game	43431	AMD	02/07/2019	2019-1/37
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	43430	AMD	02/07/2019	2019-1/41
R657-11	Taking Furbearers and Trapping	43414	AMD	01/24/2019	2018-24/25
R657-13	Taking Fish and Crayfish	43420	AMD	01/24/2019	2018-24/27
R657-22	Commercial Hunting Areas	43491	AMD	03/25/2019	2019-4/22
R657-33	Taking Bear	43492	AMD	03/25/2019	2019-4/27
R657-38	Dedicated Hunter Program	43432	AMD	02/07/2019	2019-1/44
R657-67	Utah Hunter Mentoring Program	43498	5YR	02/04/2019	2019-5/101

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Administration

R698-4	Certification of the Law Enforcement Agency of a Private College or University	43523	5YR	02/14/2019	2019-5/101
R698-5	State Hazardous Chemical Emergency Response Commission Advisory Committee	43418	AMD	02/20/2019	2018-24/29

Criminal Investigations and Technical Services, Criminal Identification

R722-920	Cold Case Database	43435	NEW	02/20/2019	2019-1/49
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Driver License

R708-10	Driver License Restrictions	43590	5YR	03/15/2019	2019-7/65
R708-22	Commercial Driver License Administrative Proceedings	43606	5YR	03/28/2019	Not Printed
R708-24	Renewal of a Commercial Driver License (CDL)	43607	5YR	03/28/2019	Not Printed
R708-26	Learner Permit Rule	43591	5YR	03/15/2019	2019-7/66
R708-31	Ignition Interlock Systems	43592	5YR	03/15/2019	2019-7/66

Fire Marshal

R710-15	Seizure and Disposal of Fireworks, Class A Explosives, and Class B Explosives	43354	NEW	01/14/2019	2018-22/155
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Peace Officer Standards and Training

R728-502	Procedure for POST Instructor Certification	43534	5YR	02/21/2019	2019-6/45
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REGENTS (BOARD OF)

Administration

R765-615	Talent Development Incentive Loan Program	43405	NEW	03/14/2019	2018-24/33
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Salt Lake Community College

R784-1	Government Records Access and Management Act Rules	43594	5YR	03/19/2019	Not Printed
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University of Utah, Administration

R805-3	Overnight Camping and Campfires on University of Utah Property	43541	5YR	02/25/2019	2019-6/46
R805-6	University of Utah Shooting Range Access and Use Requirements	43499	5YR	02/04/2019	2019-5/102

University of Utah, Museum of Natural History (Utah)

R807-1	Curation of Collections from State Lands	43535	5YR	02/22/2019	2019-6/47
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TAX COMMISSION

Property Tax

R884-24P-19	Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702	43437	AMD	03/28/2019	2019-1/51
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R884-24P-74	Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201	43438	AMD	03/28/2019	2019-1/54
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<u>Administration</u>					
R895-7	Acceptable Use of Information Technology Resources	43467	5YR	01/03/2019	2019-3/45
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<u>Administration</u>					
R907-66	Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects	43490	R&R	03/26/2019	2019-4/31
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R918-4	Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs	43489	AMD	03/26/2019	2019-4/36
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R920-50	Ropeway Operation Safety	43444	AMD	02/07/2019	2019-1/63
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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	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>acceptable use</u> Technology Services, Administration	43467	R895-7	5YR	01/03/2019	2019-3/45
<u>activities</u> Education, Administration	43506	R277-494-4	NSC	02/20/2019	Not Printed
<u>administrative law judges</u> Human Resource Management, Administration	43470	R477-101	5YR	01/07/2019	2019-3/44

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Natural Resources, Forestry, Fire and State Lands	43480	R652-70	AMD	03/25/2019	2019-3/28	
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Public Safety, Driver License	43606	R708-22	5YR	03/28/2019	Not Printed	
<u>adopt-a-highway</u>						
Transportation, Operations, Maintenance	43489	R918-4	AMD	03/26/2019	2019-4/36	
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	43212	R307-110-10	AMD	03/05/2019	2018-19/31	
	43212	R307-110-10	CPR	03/05/2019	2019-3/40	
	42976	R307-110-17	AMD	01/03/2019	2018-13/35	
	42976	R307-110-17	CPR	01/03/2019	2018-21/134	
<u>air quality</u>						
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	43211	R307-511	CPR	03/05/2019	2019-3/41	
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	43401	R277-553	NEW	01/09/2019	2018-23/31	
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<u>appraisals</u>						
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	43371	R884-24P-27	AMD	01/10/2019	2018-23/119	
	43438	R884-24P-74	AMD	03/28/2019	2019-1/54	
<u>archaeological</u>						
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<u>bear</u> Natural Resources, Wildlife Resources	43492	R657-33	AMD	03/25/2019	2019-4/27
<u>big game seasons</u> Natural Resources, Wildlife Resources	43431	R657-5	AMD	02/07/2019	2019-1/37
<u>birds</u> Natural Resources, Wildlife Resources	43430	R657-9	AMD	02/07/2019	2019-1/41
<u>birth control</u> Health, Family Health and Preparedness, Maternal and Child Health	43402	R433-200	NEW	03/06/2019	2018-24/18
<u>birth defect reporting</u> Health, Family Health and Preparedness, Children with Special Health Care Needs	43472	R398-5	AMD	03/11/2019	2019-3/18
<u>birth defects</u> Health, Family Health and Preparedness, Children with Special Health Care Needs	43472	R398-5	AMD	03/11/2019	2019-3/18
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<u>breast and cervical cancer screening</u> Health, Disease Control and Prevention, Health Promotion	43539	R384-200	5YR	02/25/2019	2019-6/42
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<u>buildings</u> Administrative Services, Facilities Construction and Management	43525 43567	R23-29 R23-29	NSC 5YR	03/01/2019 03/06/2019	Not Printed 2019-7/60
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<u>campfire</u> Regents (Board of), University of Utah, Administration	43541	R805-3	5YR	02/25/2019	2019-6/46
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<u>capital investments</u> Governor, Economic Development	43488	R357-7	EXT	01/24/2019	2019-4/47
<u>carbon monoxide detectors</u> Education, Administration	43507	R277-400	5YR	02/08/2019	2019-5/95
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	43141	R523-5	CPR	01/29/2019	2018-24/38
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<u>charter schools</u> Education, Administration	43374	R277-470	REP	01/09/2019	2018-23/9
	43399	R277-481	REP	01/09/2019	2018-23/12
	43400	R277-550	NEW	01/09/2019	2018-23/21
	43393	R277-551	NEW	01/09/2019	2018-23/24
	43478	R277-551	AMD	03/13/2019	2019-3/10
	43401	R277-553	NEW	01/09/2019	2018-23/31
	43395	R277-554	NEW	01/09/2019	2018-23/34
	43396	R277-555	NEW	01/09/2019	2018-23/38
<u>child placing</u> Human Services, Administration, Administrative Services, Licensing	43356	R501-7	AMD	02/12/2019	2018-23/105
<u>child welfare</u> Human Services, Child and Family Services	43358	R512-305	AMD	01/09/2019	2018-23/115
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<u>cold case database</u> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	43435	R722-920	NEW	02/20/2019	2019-1/49
<u>cold cases</u> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	43435	R722-920	NEW	02/20/2019	2019-1/49
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	43383	R309-211	AMD	01/15/2019	2018-23/85	
	43384	R309-215-10	AMD	01/15/2019	2018-23/91	
	43385	R309-215-16	AMD	01/15/2019	2018-23/93	
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	43385	R309-215-16	AMD	01/15/2019	2018-23/93	
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	43383	R309-211	AMD	01/15/2019	2018-23/85	
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	43380	R309-110-4	AMD	01/15/2019	2018-23/60	
	43381	R309-200	AMD	01/15/2019	2018-23/73	
	43382	R309-210-8	AMD	01/15/2019	2018-23/80	
	43383	R309-211	AMD	01/15/2019	2018-23/85	
	43384	R309-215-10	AMD	01/15/2019	2018-23/91	
	43385	R309-215-16	AMD	01/15/2019	2018-23/93	
	43386	R309-220-4	AMD	01/15/2019	2018-23/99	
	43387	R309-225-4	AMD	01/15/2019	2018-23/101	
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	43400	R277-550	NEW	01/09/2019	2018-23/21	
	43393	R277-551	NEW	01/09/2019	2018-23/24	
	43478	R277-551	AMD	03/13/2019	2019-3/10	
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	43321	R426-9	AMD	01/18/2019	2018-22/114	
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	43394	R277-552	NEW	01/09/2019	2018-23/26	
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health care facilities

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health effects

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Help America Vote Act

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hemp extraction

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hemp oil

Agriculture and Food, Plant Industry	43571	R68-25	NSC	03/21/2019	Not Printed
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hemp products

Agriculture and Food, Plant Industry	43571	R68-25	NSC	03/21/2019	Not Printed
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higher education

Money Management Council, Administration	43504	R628-20	EXT	02/05/2019	2019-5/103
Regents (Board of), Administration	43405	R765-615	NEW	03/14/2019	2018-24/33

hormonal contraception

Health, Family Health and Preparedness, Maternal and Child Health	43402	R433-200	NEW	03/06/2019	2018-24/18
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hot springs

Health, Disease Control and Prevention, Environmental Services	43502	R392-303	5YR	02/05/2019	2019-5/96
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human services

Human Services, Administration, Administrative Services, Licensing	43330	R501-1	AMD	01/17/2019	2018-22/119
	43356	R501-7	AMD	02/12/2019	2018-23/105
	43234	R501-8	AMD	01/17/2019	2018-21/89
	43237	R501-21	AMD	02/12/2019	2018-21/91

hunter education

Natural Resources, Wildlife Resources	43498	R657-67	5YR	02/04/2019	2019-5/101
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hunting

Natural Resources, Wildlife Resources	43432	R657-38	AMD	02/07/2019	2019-1/44
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hunting parks

Agriculture and Food, Animal Industry	43469	R58-20	5YR	01/07/2019	2019-3/43
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ignition interlock systems

Public Safety, Driver License	43592	R708-31	5YR	03/15/2019	2019-7/66
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implementation

Education, Administration	43395	R277-554	NEW	01/09/2019	2018-23/34
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in-service training

Public Safety, Peace Officer Standards and Training	43534	R728-502	5YR	02/21/2019	2019-6/45
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<u>incentives</u>					
Governor, Energy Development (Office of)	43223	R362-4	AMD	02/05/2019	2018-20/18
Regents (Board of), Administration	43405	R765-615	NEW	03/14/2019	2018-24/33
<u>incident reporting</u>					
Education, Administration	43439	R277-912	NEW	02/07/2019	2019-1/26
<u>individual open enrollment period</u>					
Insurance, Administration	43474	R590-269	5YR	01/11/2019	2019-3/44
<u>information technology resources</u>					
Technology Services, Administration	43467	R895-7	5YR	01/03/2019	2019-3/45
<u>inspections</u>					
Agriculture and Food, Animal Industry	43469	R58-20	5YR	01/07/2019	2019-3/43
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Public Safety, Peace Officer Standards and Training	43534	R728-502	5YR	02/21/2019	2019-6/45
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Insurance, Administration	43514	R590-170	5YR	02/11/2019	2019-5/97
	43429	R590-186-5	AMD	02/07/2019	2019-1/31
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Insurance, Administration	43604	R590-102	NSC	04/01/2019	Not Printed
	43485	R590-102-21	AMD	03/26/2019	2019-4/4
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Health, Family Health and Preparedness, Children with Special Health Care Needs	43538	R398-10	5YR	02/25/2019	2019-6/43
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Education, Administration	43373	R277-509	AMD	01/09/2019	2018-23/19
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Money Management Council, Administration	43503	R628-19	EXT	02/05/2019	2019-5/103
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	43500	R597-3	5YR	02/05/2019	2019-5/100
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Judicial Performance Evaluation Commission, Administration	43501	R597-1	5YR	02/05/2019	2019-5/100
	43500	R597-3	5YR	02/05/2019	2019-5/100
<u>judiciary</u>					
Judicial Performance Evaluation Commission, Administration	43501	R597-1	5YR	02/05/2019	2019-5/100
<u>justice court classifications</u>					
Judicial Performance Evaluation Commission, Administration	43601	R597-4	5YR	03/22/2019	Not Printed
<u>justice court evaluations</u>					
Judicial Performance Evaluation Commission, Administration	43601	R597-4	5YR	03/22/2019	Not Printed
<u>justice court multiple election years</u>					
Judicial Performance Evaluation Commission, Administration	43601	R597-4	5YR	03/22/2019	Not Printed
<u>justice court multiple jurisdictions</u>					
Judicial Performance Evaluation Commission, Administration	43601	R597-4	5YR	03/22/2019	Not Printed

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Public Safety, Driver License	43591	R708-26	5YR	03/15/2019	2019-7/66
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Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed
	43189	R156-28	AMD	03/25/2019	2018-19/7
	43189	R156-28	CPR	03/25/2019	2019-4/40
	43543	R156-60	5YR	02/26/2019	2019-6/41
	43465	R156-80a	5YR	01/02/2019	2019-2/19
Human Services, Administration, Administrative Services, Licensing	43330	R501-1	AMD	01/17/2019	2018-22/119
	43356	R501-7	AMD	02/12/2019	2018-23/105
	43234	R501-8	AMD	01/17/2019	2018-21/89
	43237	R501-21	AMD	02/12/2019	2018-21/91
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Administrative Services, Risk Management	43235	R37-4	AMD	01/18/2019	2018-21/2
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Regents (Board of), Administration	43405	R765-615	NEW	03/14/2019	2018-24/33
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Lieutenant Governor, Elections	43493	R623-1	5YR	01/28/2019	2019-4/44
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Health, Health Care Financing, Coverage and Reimbursement Policy	43473	R414-515	AMD	03/21/2019	2019-3/21
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Lieutenant Governor, Administration	43595	R622-2	5YR	03/19/2019	Not Printed
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	43483	R414-516	AMD	03/21/2019	2019-3/23
	43332	R414-520	NEW	01/04/2019	2018-22/111
	43352	R414-521	NEW	01/04/2019	2018-22/113

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Commerce, Occupational and Professional Licensing	43543	R156-60	5YR	02/26/2019	2019-6/41	
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Human Services, Substance Abuse and Mental Health	43355	R523-19	NEW	01/29/2019	2018-23/118	
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	43401	R277-553	NEW	01/09/2019	2018-23/31	
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Natural Resources, Parks and Recreation	43415	R651-406	AMD	01/24/2019	2018-24/23	
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Environmental Quality, Air Quality	43211	R307-511	NEW	03/05/2019	2018-19/32	
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	43547	R65-5	NSC	03/13/2019	Not Printed
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	43549	R65-12	NSC	03/13/2019	Not Printed
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Insurance, Administration	43521	R590-225	5YR	02/13/2019	2019-5/98
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	43504	R628-20	EXT	02/05/2019	2019-5/103
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	43611	R277-601	5YR	03/29/2019	Not Printed	
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