

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Kimberly K. Hood, Executive Director

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

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

Division of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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

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

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## Governor's Executive Order EO/2014/007: Wildland Fire Management

### EXECUTIVE ORDER

#### Wildland Fire Management

**WHEREAS**, the danger from wildland fires is extremely high throughout the State of Utah;

**WHEREAS**, current below-normal precipitation in southern Utah contributed to the early drying of wildland vegetation;  
and

**WHEREAS**, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

**WHEREAS**, immediate action is required to suppress the fires and mitigate post-burn destruction. This destruction can lead to mudslides and flash floods causing dangerous conditions for life safety, property, natural resources and the environment.;

**WHEREAS**, these conditions do create a disaster emergency within the intent of the Robert T. Stafford Disaster Relief and Emergency Assistance Act 1988;

**NOW THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in my by the constitution and the laws of the State of Utah, do hereby order that;

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of September 10, 2014, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of September 2014.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

EO/2014/007

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**Governor's Proclamation 2014/09/E: Calling the Sixtieth Legislature Into the Ninth Extraordinary Session**

PROCLAMATION

**WHEREAS**, since the adjournment of the 2014 General Session of the 60th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention;

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

**NOW, THEREFORE, I, GARY R. HERBERT**, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 60th Legislature into the Ninth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 17th day of September 2014, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2014 General Session of the Legislature of the State of Utah.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 12th day of September 2014.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2014/09/E

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between September 03, 2014, 12:00 a.m., and September 15, 2014, 11:59 p.m. are included in this, the October 01, 2014, 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 Division 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 Division 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 October 31, 2014. 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 January 29, 2015, the agency may notify the Division 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 Division 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**

Agriculture and Food, Plant Industry  
**R68-22**  
 Industrial Hemp Research

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 38855

FILED: 09/09/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to be in compliance with H.B. 105 which passed in the 2014 General Legislative Session and became law under Sections 4-41-101 to 4-41-103.

**SUMMARY OF THE RULE OR CHANGE:** Establishes criteria for department-certified higher education institutions to grow industrial hemp for agricultural or academic research.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-41-101

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be costs for the Department of Agriculture and Food to administer the program. The cost of reviewing the applications, monitoring during production, taking samples, the Department analyzing the samples, monitoring during harvest, and ensuring proper disposal of the product.

◆ **LOCAL GOVERNMENTS:** There will be no cost to local government associated with this rule. The only costs will be to higher education institutions who want to conduct agricultural or academic research.

◆ **SMALL BUSINESSES:** There will be no cost to small businesses associated with this rule. The only costs will be to higher education institutions who want to conduct agricultural or academic research.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost to small businesses, businesses, local governments, or individuals from the implementation of this rule. The only costs will be to higher education institutions who want to conduct agricultural or academic research.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Currently there are no compliance costs for individuals affected by this rule as no fees are built into the fee schedule. In the future, there may be costs for the Department to conduct inspections and conduct analysis at the chemistry lab. These fees are yet to be determined and will be dependent on interest expressed by higher education institutions research staff.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department anticipates no fiscal impacts to small businesses, local governments, or individuals from the implementation of this rule. The only costs will be to higher education institutions who want to conduct agricultural or academic research on industrial hemp. This rule is comply with H.B. 105 (2014) that was passed in the last legislative session.

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

AGRICULTURE AND FOOD  
 PLANT INDUSTRY  
 350 N REDWOOD RD  
 SALT LAKE CITY, UT 84116-3034  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Clark Burgess by phone at 801-538-7188, by FAX at 801-538-7189, or by Internet E-mail at cburgess@utah.gov  
 ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ◆ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov  
 ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

**R68. Agriculture and Food, Plant Industry.**

**R68-22. Industrial Hemp Research.**

**R68-22-1. Authority and Purpose.**

Pursuant to Section 4-41-103, this rule establishes the standards, practices, and procedures of the Industrial Hemp Certificate.

**R68-22-2. Definitions.**

(1) "Academic Research": means growth of industrial hemp for seed stock from parent material intended for varietal development, phytoremediation, and agronomic practices.

(2) "Agricultural Research": means growth of industrial hemp for the purpose of discovering and enabling development of useful processes, information, and products.

(3) "Applicant(s)": means a person, or group of persons from a higher education institution who apply for an Industrial Hemp Certificate from the Utah Department of Agriculture and Food.

(4) "Department": means the Utah Department of Agriculture and Food

(5) "Growing Area": means the area on which the hemp is grown, inside or outside.

(6) "Industrial Hemp": means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(7) "Industrial Hemp Certificate": means a certificate issued by the department to a higher education institution granting authorization to grow and/or cultivate industrial hemp for research purposes.

(8) "Research Plan": means a plan stating the objective(s) and purpose(s) of the research being proposed, methods and procedures for carrying out the research, the name(s) and telephone number(s) for the faculty adviser(s), the institution's name and address, and the names of all applicant(s) involved in the project.

(9) "Security Plan": means a plan stating the methods, procedures, and policies the applicant shall use to prevent the use and transfer of industrial hemp for purposes other than those listed in research plan.

**R68-22-3. Application for Industrial Hemp Certificate.**

(1) Applicant(s) seeking certification shall submit the following to the Department:

- (a) A research plan,
- (b) A description of the industrial hemp varieties to be planted on the growing area(s),
- (c) The legal description of the growing area(s),
- (d) Physical address,
- (e) The global positioning coordinates for the center of the growing area(s),
- (f) Maps of the growing area showing the boundaries and dimensions of the growing area(s) in acres or square feet, and the location of the different varieties within the growing area(s),
- (g) A criminal history and background checks for all applicant(s) participating in the project, and
- (h) A security plan.

(2) Applicant(s) acknowledge and agree to the following:

- (a) Any information provided to the Department may be provided to law enforcement agencies without notice,
- (b) Applicant(s) will comply with all the terms and conditions of certificate, state, and federal laws, and
- (c) Applicant(s) will allow department officials and law enforcement officers on the growing area(s) at any time.

**R68-22-4. Terms of the Certificate.**

(1) The term of the Certificate is one calendar year beginning in January and ending in December. A person seeking more than one year shall reapply for certification each year.

(2) Prior to each planting, applicant(s) shall provide the department with a statement verifying:

- (a) That the type and varieties to be planted in the growing area(s),
- (b) The location of all growing area(s), and
- (c) The amount to be planted in each location.

(3) 7 days prior to harvest, applicant(s) shall provide the department with a statement of the intended disposition of the crop.

(4) Applicant(s) shall take all necessary measure to avoid the inadvertent dissemination of industrial hemp.

**R68-22-5. Inspection and Revocation of Certification.**

(1) Growing area(s) are subject to random sampling to verify the THC concentration does not exceed 0.3% on a dry weight basis by department officials.

(2) Department and law enforcement official(s) shall have complete and unrestricted access to all industrial hemp plants and seeds whether growing or harvested, all land, buildings and other structures used for the cultivation and storage of industrial hemp.

(3) Samples of each variety of industrial hemp may be sampled from each growing area(s) at the department's discretion.

(4) The department will conduct the laboratory testing on the samples to determine the THC concentration on a dry weight basis.

(5) The department shall test each of the growing area(s) two weeks prior to harvest.

(a) The Applicant shall notify the department at least 3 weeks prior to harvest.

(6) Any laboratory test result of greater than 0.3% may be considered a violation of the terms of the certificate. Upon receipt of such a test the department may revoke the certificate.

(7) Upon a test result of greater than 0.3% the department shall:

- (a) Notify the faculty advisor of all test results,
- (b) Allow for additional testing to be done at the request of the faculty advisor,
- (i) Faculty advisor shall notify the department, in writing, within ten days if they are seeking additional testing.
- (c) Supervise the destruction of the industrial hemp crop, and
- (d) Send notification of revocation to the faculty advisor within 30 days if a determination is reached to suspend the certificate.

(8) Any laboratory test with a result of 1.0% or greater will be turned over to the appropriate law enforcement agency and revocation of the certificate will be immediate.

**R68-22-6. Renewal.**

(1) Certification shall be renewed on a year to year basis.

(2) Applicant(s) seeking renewal of the Industrial Hemp Certification shall resubmit all documents required for certification, with any updated information, 30 days prior to the expiration of the current year certificate.

**KEY: hemp, industrial hemp, research**

**Date of Enactment or Last Substantive Amendment: 2014**

**Authorizing and Implemented or Interpreted Law: 4-41-101**

Education, Administration  
**R277-404**  
 Requirements for Assessments of  
 Student Achievement

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38863

FILED: 09/15/2014

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-404 is amended to remove outdated definitions, assessments, requirements, and protocols regarding state assessments and administration of assessments, and replace with current language and terminology.

SUMMARY OF THE RULE OR CHANGE: The amended rule provides new assessments, definitions, responsibilities, and procedures that meet state requirements related to assessment of student achievement, and removes outdated language and terminology.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-1-603 through 53A-1-611

## ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amended rule provides new assessments, definitions, responsibilities, and procedures that meet state requirements related to assessment of student achievement, and removes outdated language and terminology which likely will not result in costs or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amended rule provides new assessments, definitions, responsibilities, and procedures that meet state requirements related to assessment of student achievement, and removes outdated language and terminology which likely will not result in costs or savings to local government.

◆ SMALL BUSINESSES: The amended rule provides new assessments, definitions, responsibilities, and procedures that meet state requirements related to assessment of student achievement, and removes outdated language and terminology which likely will not result in costs or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amended rule provides new assessments, definitions, responsibilities, and procedures that meet state requirements related to assessment of student achievement, and removes outdated language and terminology which likely will not result in costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amended rule provides new assessments, definitions, responsibilities, and procedures that meet state requirements related to assessment of student achievement, and removes outdated language and terminology which likely will not result in compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.****R277-404. Requirements for Assessments of Student Achievement.****R277-404-1. Definitions.**

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

B. "Benchmark reading assessment" means an assessment determined by the Board for students in grade 1 through 3 and administered to students at the beginning, midpoint and end of year.

~~[B]C.~~ "College readiness assessment" means an assessment adopted by the Board that includes a college admissions test that provides an assessment of language arts, mathematics, and science, that is most commonly used by local universities to assess student preparation for college. The college readiness assessment may include the Armed Services Vocational Aptitude Battery (ASVAB) and a battery of assessments that is predictive of success in higher education.

~~[C.]~~ "Days," for purposes of this rule, means calendar days unless specifically designated otherwise in this rule.

~~D. "Direct Writing Assessment (DWA)" means a Board-designated online assessment to measure writing performance for students in grades five and eight.~~

D. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

E. "English [~~Language~~]Learner (EL[~~L~~]) student" means a student who is learning in English as a second language.

F. "English [~~L~~]language [~~P~~]proficiency [~~Test~~ (~~ELPT~~)]assessment" means an assessment designated by the USOE and designed to measure the acquisition of the academic English language for English [~~Language~~]Learners.

G. "Family Educational Rights and Privacy Act of 1974 (FERPA)." 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

[G]H. "Individualized Education Program (IEP)" means an individualized instructional and assessment plan for students who are eligible for special education services under the Individuals with Disabilities Education Act of 2004.

[H]I. "LEA" means local education agency, including local school boards/ public school districts and schools, and charter schools.

[F]J. "National Assessment of Education Progress (NAEP)" is the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

K. "Online Writing Assessment" means a Board-designated online assessment to measure writing performance for students in grades 3 through 11.

[J]L. "Pre-post" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency which has occurred during the school year.

M. "Student Assessment of Growth and Excellence (SAGE)" means a summative computer adaptive assessment for English language arts grades 3 through 11; mathematics grades 3 through 8, and Secondary I, II, and III; science grades 4 through 8, earth science, biology, physics and chemistry.

[K]N. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

[E]O. "Summative adaptive assessments" means assessments administered upon completion of instruction to assess a student's achievement. The assessments are administered online [to] under the direct supervision of a licensed educator and are designed to identify student achievement on the standards for the respective grade and course. The assessments measure 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. [Summative assessments provide summary information allowing a student or groups of students to be compared with other students.]

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

[N]Q. "Utah [A]alternate [A]assessment[-(UAA)]" means an assessment instrument designated by the USOE for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with assessment accommodations or modifications. The [UAA]Utah alternative assessment measures progress on the Utah core instructional goals and objectives in the student's individual education program (IEP).

[O]R. "Utah eTranscript and Record Exchange (UTREX)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

[P]S. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) summative adaptive assessments of students in grades 3 through 12 in basic skills courses;

(2) an online writing assessment in grades ~~[5 and 8]~~3 through 11, as part of SAGE;

(3) college readiness assessments; and

~~[the use of student behavior indicators in assessing student performance; and~~

~~]~~ ([5]4) summative assessment of students in grade 3 to measure reading grade level using grade 3 SAGE English Language Arts.

#### **R277-404-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the maintenance and administration of U-PASS, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions and to ~~[provide standards]~~assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

#### **R277-404-3. Board Responsibilities.**

A. The Board shall maintain a comprehensive assessment system for all students in grades K-12. This assessment system shall include:

(1) ~~[S]~~summative adaptive assessments in English language arts for grades 3 ~~[-]through~~ 11; mathematics for grades 3 ~~[-] through~~ 8; secondary math 1, 2, and 3; and science for grades 4 ~~[-]through~~ 8; earth systems, biology, physics and chemistry;

(2) ~~[Direct]~~Online Writing Assessment~~[-(DWA)]~~ for grades ~~[5 and 8]~~3 through 11;

(3) ~~[P]~~pre-post kindergarten assessment for kindergarten students as determined by the LEA;

(4) one benchmark reading assessment ~~[determined]~~approved by the ~~[USOE]~~Board for students in grades 1 ~~[st, 2nd and]~~ through 3 ~~[rd grade students]~~ and administered to students at ~~[the midpoint of the year. This assessment shall be administered at]~~the beginning, midpoint and end of year;

(5) ~~[Third grade]~~grade 3 ~~[summative]~~end of year summative reading assessment using grade 3 SAGE English Language Arts;

(6) Utah's ~~[A]~~alternate ~~[A]~~assessment~~[-(UAA)]~~, for eligible students with disabilities;

(7) an English ~~[L]~~language ~~[P]~~proficiency ~~[F]test[-(ELPT)]~~;

(8) National Assessment of Educational Progress (NAEP);

(9) ~~[C]~~college readiness assessments for grade[s] 11~~[-10 and either grade 9 or 8]~~ and optional college and career readiness assessments in grade 8 or 9 and 10, as determined by the LEA; and

(10) ~~[R]~~reporting by the USOE of U-PASS results to include:

(a) ~~[the computation of]~~student performance based on information that is disaggregated with respect to race, ethnicity, gender, ~~[limited]~~English proficiency, eligibility for special

education services, and ~~[those students who qualify for]~~ free or reduced price school lunch status;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, ~~[multiple assessment forms,]~~ assessment administration protocols, and training; and

(c) ~~[compilation of]~~ summative adaptive assessment results ~~[and online writing assessment scores and assessment summaries]~~ disseminated by USOE to LEAs, parents, and others, as appropriate, consistent with FERPA.

B. The Board shall provide specific rules, administrative guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

~~[C. The Board shall provide information and applications:~~

~~(1) establishing procedures for applying for and awarding funding for computer adaptive assessment technology;~~

~~(2) specifying how funds for computer adaptive assessment technology shall be allocated among LEAs that qualify to receive the funding; and~~

~~(3) requiring reporting of the expenditure of funds awarded for computer adaptive assessment technology and evidence that the funds were used to implement computer adaptive assessments.~~

~~D. The Board shall provide resources, to the extent available, and recommendations for:~~

~~(1) LEA implementation of the assessment system;~~

~~(2) professional development for teachers to administer assessments and interpret assessment results; and~~

~~(3) teacher access to assessment scores from the previous school year for students who have been assigned to the teacher's class for the new school year.~~

~~E. All Utah public school students shall participate in the comprehensive assessment system unless the UAA or ELPT is approved for specific students consistent with federal law.~~

#### **R277-404-4. LEA Responsibilities.**

A. LEAs shall develop a comprehensive assessment system plan to include the assessments described in R277-404-3A. This plan shall, at a minimum, include:

(1) professional development for [teachers]educators to fully implement the assessment system;

(2) training for educators and appropriate paraprofessionals in the requirements of assessment administration ethics; and

(3) training for educators and appropriate paraprofessionals to utilize assessment results effectively to inform instruction~~[-]; and~~

(4) adequate oversight of test administration to ensure compliance with Section 53A-1-603(1) as follows:

(a) LEAs or online providers shall test all enrolled students unless students have a written parental excuse under Section 53A-15-1403(9);

(b) Students participating in the Statewide Online Education Program shall be assessed consistent with Section 53A-15-1210; and

(c) Third party vendors or contractors may not administer or supervise U-PASS assessments.

B. LEAs shall make all policies and procedures consistent with the law, Board rules for standardized assessment

administration, and the USOE Testing Ethics Policy~~[available from the USOE], approved by the Board August 8, 2014.~~

C. At least once each school year, LEAs shall provide professional development for all [teachers]educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including [teacher]educator responsibility for assessment security and proper professional practices.

D. LEA assessment staff shall use the USOE Testing Ethics Policy in providing training for all assessment administrators/proctors.

E. LEAs may not release state assessment data publicly until authorized to do so by the USOE.

#### **R277-404-5. School Responsibilities.**

A. LEAs/schools shall require [teachers]educators and assessment administrators/proctors to individually sign the Testing Ethics signature page provided by the USOE acknowledging or assuring that the [teacher shall]educator administers assessments consistent with ethics and protocol requirements.

B. All [teachers]educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, provide assessment results and complete error resolution.

C. All [teachers]educators and assessment administrators/proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, Board rules, USOE Testing Ethics Policy, and state applications of federal requirements for funding.

D. A student's IEP, EL, or Section 504 team shall determine an individual student's participation in statewide assessments.

#### **R277-404-6. Student and Parent Participation in Student Assessments in Public Schools.**

A. All LEAs shall administer the comprehensive assessment system to all students unless the Utah alternative assessment is approved for specific students consistent with federal law or unless students are excused by a parent or guardian under Section 53A-15-1403(9).

B. An LEA educator shall provide a student's individual test results and scores to the student's parent/legal guardian consistent with FERPA.

#### **R277-404-[6]7. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

A. [Teachers]Educators, test administrators/proctors, administrators, and school [personnel and volunteers, under the direction of school personnel,]employees [shall]may not:

(1) provide students directly or indirectly with specific questions, answers, or the content of any specific item in a~~[ny]~~ standardized assessment prior to assessment administration;

(2) download, copy, print, take pictures of or make any facsimile of protected assessment material prior to, during or after assessment administration without express permission of the USOE and LEA administrators;

(3) change, alter or amend any student ~~[answer]~~ online or paper response or any other standardized assessment materials at any time in such a way that alters the student's intended response;

(4) use any prior form of any standardized assessment (including pilot assessment materials) that has not been released by the USOE in assessment preparation without express permission of the USOE and LEA administrators;

(5) violate any specific assessment administrative procedure specified in the assessment administration manual, or violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in the USOE Testing Ethics Policy;

(6) fail to administer a state required assessment;

~~(7) fail to administer a state required assessment within the designated assessment window;~~

~~(7)8) submit falsified data;[-or]~~

~~(9) allow students to copy, reproduce, or photograph assessment items or components; or~~

~~(8)10) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.~~

~~B. A school employee shall promptly report all assessment violations or irregularities to a building administrator, an LEA superintendent or director, or the USOE.~~

~~C. Educators who violate these rules or assessment protocols are subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.~~

~~[B]D. All assessment materials, questions and student responses for required assessments shall be designated protected, consistent with Section 63G-2-305, until released by the USOE.~~

~~[-----C. A student's individual responses and scores shall be available to the student's parent(s)/legal guardian(s) consistent with the federal Family Educational Rights and Privacy Act (FERPA), 20 USC, Sec. 1232g, 34 CFR Part 99.~~

~~[D]E. Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to USOE following testing, as required by the USOE. Individual educators or school employees [shall] may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.~~

~~[-----E. Violation of any of these rules subjects licensed educators to possible disciplinary action under R277-515, Utah Educator Standards.~~

~~-----F. A student's IEP, ELL, or Section 504 team shall determine a student's participation in statewide assessments.~~

**R277-404-[7]8. Time Periods for Assessment Administration.**

A. LEA[s] educators or trained employees shall administer assessments required under R277-404-3[-and] consistent with the following schedule:

(1) All summative adaptive assessments, an online writing assessment and a ~~[UAA]~~ Utah alternative assessment (elementary and secondary, English language arts, math, science) ~~[shall be administered]~~ within the USOE annually designated assessment windows.

~~[----- (2) The grade 5 and grade 8 Direct Writing Assessment shall be administered in a three week window beginning at least 14 weeks prior to the last day of school.~~

~~[(3)2) The [UALPA]English language proficiency assessment:~~

~~(a) LEA educators or trained employees shall [be-] administer[ed] the assessment annually to all English [Language-] Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the LEA at any time during the school year[.---The assessment shall be administered annually] to show student progress[-]; and~~

~~(b) LEA[s] educators or trained employees shall submit [UALPA paper answer documents]English language proficiency assessment materials to the USOE-identified scoring provider for scanning and scoring on a schedule defined by the USOE.~~

~~(4)3) LEA educators or trained employees shall administer [P]pre-post kindergarten assessment for kindergarten students as determined by the LEA during assessment windows determined by the LEA.~~

~~(5)4) LEA educators or trained employees shall administer [O]one benchmark reading assessment [specifically and solely-]determined by the [USOE]Board for grade 1, grade 2, and grade 3 students[-administered to students] in the beginning, midpoint, and end of the school year.~~

~~(6)5) LEA educators or trained employees shall administer [G]grade 3[-summative] end of year summative reading assessment [determined specifically and solely by USOE-administered by LEAs consistent with USOE procedures]using grade 3 SAGE English Language Arts.~~

~~(7)6) LEA educators or trained employees shall administer NAEP assessments determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.~~

~~B. LEA[s] educators or trained employees shall complete all required assessment procedures prior to the end of the USOE-defined assessment window(s).~~

~~C. LEAs that have alternative schedules shall submit an annual testing plan to the USOE by September 1 annually. The plan shall:~~

~~(1) set dates for summative adaptive assessment administration for courses taught face to face or online[-on-] alternative, year-round, semester or trimester schedules.];~~

~~(2) [LEAs shall]set dates to assess students at the point in the course where students have had approximately the same amount of instructional time as students on a traditional full year schedule[-]; and~~

~~(3) [LEAs with alternative scheduling shall-]provide a course level [test administration]assessment schedule[(-s)] to the USOE before instruction begins for the course.~~

**R277-404-[8]9. Data Exchanges.**

A. The USOE IT Section shall communicate regularly with LEAs regarding required formats for electronic submission of required data.

B. LEAs shall update UTREx data using the processes and according to schedule(s) determined by the USOE.

C. LEAs shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements as determined in R277-484.

D. The USOE shall provide directions to all LEAs detailing the data exchange requirements for each assessment.

E. Each LEA shall verify that all the requirements of the USOE-provided directions have been satisfied.

F. Consistent with Utah law, the USOE shall return assessment results from all required assessments to the school before the end of the school year.

~~G. Each LEA shall check all assessment results for each school within the LEA and for the LEA as a whole, verify their accuracy with the USOE, and certify that they are prepared for publication within two weeks of receipt of the data. Except in compelling circumstances, as determined by the USOE, no changes shall be made to LEA data after this two-week period. Compelling circumstances may include:~~

~~(1) a natural disaster or other catastrophic occurrence, such as a school fire or flood, that precludes timely review of data; and~~

~~(2) resolution of a professional practices issue that may impede reporting of the data.~~

~~H. LEAs shall not release data publicly until authorized to do so by the USOE.~~

**~~R277-404-9. Crisis Indicators in State Assessments.~~**

~~A. Students participating in state assessments may reveal intentions to harm themselves or others, that a student is at risk of harm from others, or may reveal other indicators that the student is in a crisis situation.~~

~~B. If a student's response comes to the attention of USOE assessment staff, the USOE shall notify the school principal, counselor or other LEA personnel who USOE staff determines has legitimate educational interests, whenever the USOE identifies and determines, in its sole discretion, that a student response indicates the student may be in a crisis situation.~~

~~C. As soon as practicable, the school district superintendent/charter school director, or designee shall be given the name of the individual contacted at the school regarding a student's potential crisis situation.~~

~~D. The USOE shall provide the school and district with a copy of the relevant student response.~~

~~E. Using their professional judgment, school personnel contacted by USOE shall notify the student's parent, guardian or law enforcement of the student's expressed intentions as soon as practical under the circumstances.~~

~~F. The student response provided by USOE shall not be part of the student's record and the school shall destroy any copies of the student response once the school or district personnel involved in resolution of the matter determine the student response is no longer necessary.~~

~~G. School personnel who contact a parent, guardian or law enforcement agency in response to the USOE's notification of potential harm shall provide the USOE with the name of the person contacted and the date of the contact within three business days from the date of contact.~~

]

**KEY: assessment, student achievement**

**Date of Enactment or Last Substantive Amendment:**  
~~[November 7, 2013]~~2014

**Notice of Continuation: September 13, 2013**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603 through 53A-1-611; 53A-1-401(3)**

**Education, Administration**  
**R277-422-4**  
**K-3 Reading Achievement Program**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38864

FILED: 09/15/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section R277-422-4 is amended to change the way that matching funds for the K-3 Reading Achievement Program are calculated to avoid unexpected variations in mid-year allocations to individual school districts.

**SUMMARY OF THE RULE OR CHANGE:** The changes provide for school districts to use final assessed valuations and the corresponding year's tax collection rate for determining matching funds for the K-3 Reading Achievement Program.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(e)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes provide stability for school districts in determining matching funds for the K-3 Reading Achievement Program which likely will not result in costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The changes provide stability for school districts in determining matching funds for the K-3 Reading Achievement Program which likely will not result in costs or savings to local government.

◆ **SMALL BUSINESSES:** The changes provide stability for school districts in determining matching funds for the K-3 Reading Achievement Program which likely will not result in costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes provide stability for school districts in determining matching funds for the K-3 Reading Achievement Program which likely will not result in costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes provide more stability for school districts in determining matching funds for the K-3 Reading Achievement Program which likely will not result in compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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

##### **R277-422. State Supported Voted Local Levy, Board Local Levy and Reading Improvement Program.**

##### **R277-422-4. K-3 Reading Achievement Program.**

A. The K-3 Reading Improvement Program consists of program funds and is created to achieve the state's goal of having third graders reading at or above grade level.

##### B. Funding

(1) The calculation for the K-3 Reading Achievement funding shall be consistent with Section 53A-17a-150 which requires matching funds and Section 53A-17a-151.

(2) ~~School districts shall use~~ [F]the following data ~~shall be used~~ for the reading fund calculations:

(a) [F]the most ~~recent~~ current numbers of final adjusted assessed valuations received ~~by the USOE~~ from the Utah State Tax Commission;

(b) [F]the ~~previous~~ year's tax collection rate, that corresponds to the year provided under R277-522-4B(2)(a);

(c) [F]the previous fiscal year's number of Free and Reduced Price Meal applications; and

(d) [F]the current fiscal year total number of WPU's received by ~~LEAs~~ each school district for the basic school program.

**KEY: education, finance**

**Date of Enactment or Last Substantive Amendment:** ~~August 7, 2013~~ **2014**

**Notice of Continuation:** October 5, 2012

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-402(1)(f); 53A-1-401(3); 53A-17a-133; 53A-17a-164; 53A-17a-150; 53A-17a-151; 59-2-919

## Education, Administration **R277-471** Oversight of School Inspections

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38865  
FILED: 09/15/2014

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended in response to H.B. 111, School Building Cost Reporting, from the 2014 General Legislative Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-471: provide a new section on school plant capital outlay reporting to satisfy the requirements of H.B. 111 (2014); provide a new section that requires the Utah State Board of Education (Board) to adopt public school construction guidelines and local education agencies (LEAs) to consider identified factors when planning and prior to proceeding with public school construction; change existing language and add new language making the rule, state law, and the School Building Construction and Inspection Resource Manual consistent; and change the title of the rule to better reflect the rule content.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-20-104 and Section 53A-20-104.5 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The amendments provide new and revised language to satisfy the requirements of H.B. 111 and to standardize the procedures and processes in the rule. This will likely not result in costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** There may be additional costs to LEAs to comply with the requirements of this rule. Costs are speculative because each LEA will vary on its public school construction needs. It is anticipated, however, that LEAs will absorb any additional costs within existing budgets.

♦ **SMALL BUSINESSES:** The amendments provide new and revised language to satisfy the requirements of H.B. 111 and

to standardize the procedures and processes in the rule. This will likely not result in costs or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide new and revised language to satisfy the requirements of H.B. 111 and to standardize the procedures and processes in the rule. This will likely not result in costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide new and revised language to satisfy the requirements of H.B. 111 and to standardize the procedures and processes in the rule. This will likely not result in compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

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

### **R277-471. ~~[Oversight of]~~ School Construction Oversight, Inspections, Training and Reporting.**

#### **R277-471-1. Definitions.**

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

B. "Certified plans[?] examiner" means a professional who has current applicable commercial certification through the International Code Council [~~which requires a rigorous testing program]~~ (ICC).

~~[C. "Charter schools" means:~~

~~(1) schools acknowledged and operating as charter schools by local boards of education under Section 53A-1a-505 or by the Board under Section 53A-1a-515; and~~

~~(2) charter school applicants that have their applications approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, the Utah Charter Schools Act.~~

~~] C. "Charter schools" means schools acknowledged as charter schools by charter school authorizers consistent with Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.~~

D. "Charter school responsible person or local charter school board building officer [~~(charter school)]~~ or designee[?]" (CSBBO)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with [~~the Code]~~ Utah law and the Resource Manual on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53A-20-104, 53A-20-105, 10-9a-305, 17-27a-305, [~~and~~] 58-56, [~~Uniform Building Standards Act,~~] Section 15A, State Construction and Fire Code Act, as well as the provisions of R156-56 and this rule. The form is available on the USOE School Finance [~~and Statistics]~~ Section [~~Web page]~~ website [~~:- http://www.schools.utah.gov/finance/facilities/default.htm].~~

F. "Certificate of occupancy" means the document issued upon receipt of the final inspection from the inspector of record and the 'Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying compliance with all minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes permanent usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space.

~~[G]H. "Code" means the state-adopted construction code, including all statutes and administrative rules which control the construction, renovation, and inspection of Utah public school buildings.~~

~~] I. "Division" means the Division of Finance with technical assistance from the Department of Technology Services.~~

~~[G]H. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(1[+]3).~~

~~I. "Inspector" means a professional who holds current applicable commercial certification through the International Code Council (ICC) and is currently licensed in the state of Utah in the applicable trades the inspector is performing inspections.~~

~~J. "LEA" means local education agency, including local school boards/public school districts and charter schools.~~

~~K. "New school building project" means the construction of a school that did not previously exist in an LEA.~~

~~L. "Public school construction" means construction work on a new or existing public school building.~~

~~[J]M. "School Building Construction and Inspection Resource Manual, April 30, 2013, (Resource Manual)" means a manual which identifies the processes and procedures an [~~school district or charter school]~~ LEA shall follow when constructing a new public school building, maintenance, or renovating existing buildings. The Resource Manual was developed by the USOE [~~in response to legislative direction under]~~ consistent with Section 53A-20-104.5, [~~and]~~ is available on the USOE School Finance website, and is hereby incorporated by reference consistent with Section~~

~~63G-3-201(7) [and Statistics Section Web page: http://www.schools.utah.gov/finance/facilities/default.htm].~~

~~[H]N. "[Public] School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with [the Code]Utah law and the Resource Manual.~~

~~O. "Significant school remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution or replacement of an existing school in an LEA with a project cost equal to or in excess of \$2,000,000.~~

~~[F]P. "Superintendent" means the State Superintendent of Public Instruction.~~

~~O. "Temporary certificate of occupancy" means the document issued upon receipt of the temporary final inspection report from the inspector of record and the 'Temporary Certificate of Fire Clearance' issued by the Utah State Fire Marshal, verifying minimum requirements to safeguard the public health, safety and general welfare of occupants, which authorizes temporary usage or occupancy of any new building, occupiable structure or existing occupiable building or structure alteration (remodeling) or change of occupancy in an existing structure or building or space, valid for a specific time period.~~

~~[K]R. "USOE" means the Utah State Office of Education.~~

**R277-471-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-20-104 and 104.5 which direct the Superintendent to enforce requirements and provisions about public school building and alteration, verify inspections of school buildings, and provide information annually to LEAs about the construction and inspection of public school buildings, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify ~~[local school board and charter school]~~LEA board responsibilities and accountability to the Board.

**R277-471-3. ~~[School District Building Official, and Charter School]~~LEA Responsible Person.**

A. ~~[Local boards of education and local charter school]~~LEA boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspections ~~[is]are~~ conducted in accordance with the ~~[Code]law~~ to provide minimum requirements to safeguard the public health, safety and general welfare of occupants while using the most comprehensive, cost effective and efficient design means and methods.

(1) Local school boards shall appoint a ~~[School District Building Official (SDBO)]~~ who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspections ~~[is]are~~ conducted in accordance with ~~[the Code]Utah law and the Resource Manual~~. Each local charter school board shall appoint a ~~[local charter school board building officer]~~CSBBO who has direct operational responsibility for construction, renovation, and inspection of the charter school. The ~~[local charter school board building officer]~~CSBBO shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

~~[ (e) Following notification, the USOE shall provide a construction project number.~~

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of ~~[the Code]Utah law and the Resource Manual~~.

C. The ~~[local charter school board building officer]~~CSBBO shall monitor all charter school building construction to ensure compliance with the provisions of ~~[the Code]Utah law and the Resource Manual~~.

D. The SDBO and ~~[local charter school board building officer]~~CSBBO shall ~~[render interpretations of the Code for the school district or charter school. Such interpretations shall be in eformance]~~ensure that public school construction conforms with the intent and purpose of ~~[the Code]Utah law and the Resource Manual~~, insofar as they are expressed in the Code or in legislative intent].

E. The SDBO and ~~[local charter school board building officer]~~CSBBO may adopt and enforce supplemental ~~[school district and charter school]~~LEA policies under appropriate ~~[school district and charter school]~~LEA policies to clarify the application of the provisions of ~~[the Code]Utah law and the Resource Manual~~ for ~~[school district and charter school]~~LEA personnel.

**R277-471-4. School Construction Inspectors.**

A. LEAs shall employ inspectors for school construction inspection who are currently ICC commercially certified and licensed in Utah, in the trade specific to the inspection, consistent with Utah law and the Resource Manual requirements.

B. LEAs shall choose one of three methods for inspections:

(1) Independent inspectors:

(a) shall be approved by the local jurisdiction in which the construction activity occurs;

(b) may include inspectors working outside the municipality, county, or school district in which they are employed; and

(c) shall not be any of the following, nor an employee of: the architect, developer, contractor, a subcontractor working on the project, any management company or other agency hired by the LEA to perform construction or construction administrative services.

(2) School district inspectors shall be employed by and perform school construction inspections within the boundaries of the school district.

~~(3) Inspectors employed by municipalities and counties may perform school construction inspections within the boundaries of the municipality or county where they are employed.~~

~~**[R277-471-5. Charter School Land Use Zoning within Municipalities and Counties:**~~

~~A. If consistent with the general plan, a charter school shall be considered a permitted use in all zoning districts within a municipality or county, except as provided in R277-471-5D.~~

~~B. Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis by municipalities and counties.~~

~~C. Parking requirements for a charter school may not exceed the minimum parking requirements for traditional public schools of like size and grade levels or other institutional public uses throughout the municipality or county.~~

~~D. If a municipality or county has designated zones for sexually oriented businesses, or businesses which sell alcohol, a charter school may be prohibited from locations which would defeat the purpose for the zone, unless the charter school provides a waiver of liability for the local government entity by the charter school governing board in an open meeting.~~

~~**[R277-471-5. School Construction Inspections.**~~

~~[F]A. Before any school [district or charter school] construction project begins, [school districts and charter schools] the SDBO or CSBBO shall obtain a construction project number from the USOE [and] by complet[e]ing and submitting construction project identification forms provided by the USOE and other required submittals for all projects [which exceed \$99,999 in cost] consistent with Section 53A-20 and the Resource Manual.~~

~~[G]B. [All school district and charter school plans and specifications shall be approved by a] The appropriate currently certified plans [examiner shall approve all LEA school plans and specifications before any [school district or charter school] LEA construction project begins.~~

~~[H]C. If an [school district or charter school] LEA is unable to provide appropriate and proper school construction inspection and plan review services, the Superintendent may [provide for] procure inspection services [from a list of inspectors determined by the Superintendent] and charge the [school district or charter school] LEA for those services. [Fees shall be] The approved inspector shall establish [ed] fees in advance of inspection services.~~

~~[I]D. [For all school district or charter school projects that exceed \$99,999, the SDBO and local charter school board building officers shall] LEA construction projects shall comply with Section 53A-20 and the Resource Manual to:~~

~~[ (a) submit inspection summary reports monthly to the USOE;~~

~~] ([f]1) ensure that each inspector is adequately and appropriately credentialed;~~

~~([e]2) identify and provide to the USOE and local government entity building official [the total number of] reports of all inspections with the name, state license number, and disciplines of each inspector performing the project inspections;~~

~~([e]3) submit inspection certificates and all related submittals to the USOE and appropriate local government entity building official;~~

~~([b]4) submit inspection summary reports monthly to the appropriate local government entity building official and the USOE;~~

~~([g]5) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with [the] all applicable laws and [this] rules [;], and the Resource Manual to safeguard the public health, safety and general welfare of occupants;~~

~~([h]6) send the final inspection certification [and], inspection verification, and provide all other related project closeout submittals to the USOE and to the appropriate local government entity building official upon completion of the project; and~~

~~([d]7) maintain all submitted documentation at a designated [school district/charter school] LEA location for auditing or monitoring [;].~~

~~[J]E. [Reports required under this rule may be] The SDBO/CSBBO may submit paper or electronic reports to satisfy this section.~~

~~**[R277-471-6. Public School District/Charter School Construction Inspection:**~~

~~A. A public school district or charter school may employ one of three methods for school construction inspection:~~

~~(1) An independent, properly licensed and certified building inspector;~~

~~(2) a properly licensed and certified building inspector, employed by the school district; or~~

~~(3) a properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.~~

~~B. Procedure for independent properly licensed and certified building inspector:~~

~~(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.~~

~~(2) The school district, through the SDBO, or charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.~~

~~(3) The independent building inspector shall:~~

~~(a) not be an employee of the architect, contractor or any subcontractor on the project;~~

~~(b) be approved by the applicable local government or school district building inspector; and~~

~~(c) be properly licensed and certified to perform all of the inspections that the inspector is required to perform.~~

~~(4) After completion of the project, the SDBO or charter school designee shall, upon completion of all required inspections of the school building, file with the USOE and the building inspector of the local jurisdiction in which the building is located, a certificate of inspection verification, certifying that all inspections were completed in accordance with the Code.~~

~~(5) The school district or charter school shall seek a certificate authorizing permanent occupancy of the school building from the Superintendent.~~

~~(6) Within 30 days after the school district or charter school files a request for the issuance of a certificate authorizing permanent occupancy of the school building, the Superintendent shall:~~

~~(a) issue to the school district or charter school a certificate authorizing permanent occupancy of the school building; or~~

~~(b) deliver to the local school board or charter school board a written notice indicating deficiencies in the school district's or charter school's compliance with the inspection findings; and~~

~~(c) mail a copy of the certificate authorizing permanent occupancy or the notice of deficiency to the building official of the local government entity in which the school building is located.~~

~~(7) Upon the local school or charter school board's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the school district or charter school shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the school district or charter school has complied with all applicable fire and life safety code requirements.~~

~~(8) Upon the school district or charter school remedying any inspection deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building and mail a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.~~

~~(9) The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the public school building.~~

~~(10) The Superintendent may charge the school district or charter school a fee not to exceed the actual cost of performing the inspection(s) for inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the school building.~~

~~(11) A certificate authorizing permanent occupancy issued by the Superintendent shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.~~

~~C. Procedures for properly licensed and certified school district building inspector:~~

~~(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.~~

~~(2) The school district, through the SDBO, or the charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.~~

~~(3) School districts:~~

~~(a) After completion of the project, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy~~

~~certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.~~

~~(b) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.~~

~~(4) Charter schools:~~

~~(a) After completion of the project, the charter school may seek a certificate of occupancy from the SDBO of the school district providing the inspection services.~~

~~(b) If the charter school seeks a certificate of occupancy from the SDBO, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the municipality or county in which the building is located.~~

~~(c) A certificate authorizing permanent occupancy issued by a SDBO with authority to issue the certificate shall satisfy any municipal or county requirement for an inspection or a certification of occupancy.~~

~~D. Procedure for properly licensed and certified local municipal or county building inspector:~~

~~(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the public school building to the Superintendent for each project that exceeds \$99,999 in cost.~~

~~(2) The school district, through the SDBO or charter school designee, shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.~~

~~(3) School districts:~~

~~(a) After completion of the project, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.~~

~~(b) A public school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.~~

~~(4) Charter schools:~~

~~(a) After completion of the project, the charter school designee shall obtain a completed certificate of inspection verification form from the local municipal or county building inspector certifying that all inspections were completed in accordance with the Code and file the form with the USOE.~~

~~(b) A charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.~~

~~E. A municipality or county may not:~~

~~(1) require school districts or charter schools to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school~~

property. All temporary classroom facilities shall be properly inspected to meet the Code.

(2) require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;

(3) require a school district or charter school to pay fees not authorized under 10-9a-305 or 17-27a-305;

(4) require inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;

(5) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the school project upon the need that the improvement is to address; or

(6) impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students.

F. A municipality or county may, at its discretion, schedule a time with school district or charter school officials to:

(1) provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and

(2) provide recommendations based on the walk-through.

#### **R277-471-[4]6. Coordination with Local Governments, Utility Providers and State Fire Marshal.**

A. Prior to developing plans and specifications for a [new] public school[, or the expansion of an existing public school, school districts and charter schools] construction project, LEAs shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the [new] public school construction and future roadways; and

(4) maximize school, student and site safety.

B. LEAs shall cooperate with municipalities and counties and conform to municipal and county land use ordinances consistent with Sections 10-9a-305 and 17-27a-305.

[B]C. Prior to developing plans and specifications for a [new] public school[, or the expansion of an existing school, school districts and charter schools] construction project, LEAs shall coordinate with local health departments and the State Fire Marshal.

D. A charter school shall have an open meeting to seek and secure a variance from the appropriate government entity if the LEA selects a school site in a municipality or county-designated zone for sexually oriented businesses or businesses that sell alcohol.

E. Parking requirements for a charter school may not exceed the minimum parking requirements for a traditional public school of a like size and grade levels or other institutional public use throughout the municipality or county.

[C]E. [School districts and charter schools]LEAs shall maintain documentation for audit purposes of coordination, meetings, and agreements required under this section.

G. Prior to developing plans and specifications for a public school construction project, LEAs shall coordinate with local jurisdictions to comply with Federal Emergency Management Agency flood plain requirements and restrictions, including applicable mitigation measures.

#### **R277-471-7. Superintendent's Authority to Request Additional Inspections.**

A. The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing temporary or permanent occupancy of the public school building.

B. The Superintendent may charge the LEA a fee not to exceed the actual cost of performing the inspection(s) for inspection services.

#### **R277-471-8. Certification of Occupancy.**

A. School districts:

(1) After completion of the project when a school district's appropriately credentialed inspector provides inspections, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(2) After completion of the project when a local jurisdiction provides inspections, the school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the SDBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

B. Charter schools:

(1) After completion of the project and inspection by an appropriately credentialed inspector when a charter school contracts with a school district for inspections, the CSBBO shall obtain a completed certificate of inspection verification form from the SDBO certifying that all inspections were completed in accordance with Utah law and the Resource Manual, and file the form with the USOE and the jurisdiction where the public school is located.

(2) After completion of the project when a local jurisdiction provides inspections, a charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(3) After completion of the project when independent inspectors provide inspections, the CSBBO shall seek a certificate authorizing temporary or permanent occupancy of the school from the Superintendent.

C. Within 30 days after the LEA files a request for the issuance of a certificate authorizing permanent occupancy of the school building from the USOE, the Superintendent shall:

(1) issue to the LEA a certificate authorizing permanent occupancy of the school building; or

(2) deliver to the LEA board a written notice indicating deficiencies in the LEA's compliance with the inspection findings.

D. If the Superintendent does not issue the certificate authorizing permanent occupancy, the LEA shall provide notice of the deficiency to the building official of the local government entity in which the public school building is located.

E. Upon the LEA board filing the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the LEA shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the LEA has complied with all minimum requirements to safeguard the public health, safety and general welfare of occupants.

F. Upon the LEA remedying any deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building.

G. Upon receipt of the certificate of occupancy, the LEA shall provide a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

**R277-471-[7]9. School Building Construction and Inspection Resource Manual.**

A. The USOE shall develop and distribute [to each school district and charter school a Resource Manual] a Resource Manual, or provide an electronic version, on the USOE School Finance website, consistent with Section 53A-20-104.5.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction, operations, maintenance, minimum requirements to safeguard the public health, safety and general welfare of occupants, and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board [~~local school boards, charter school~~] and LEA boards, as well as [~~school district and charter school~~] LEA personnel, shall act consistent with the Resource Manual.

**R277-471-10. School Construction Guidelines.**

A. The Board shall adopt public school construction guidelines that take into consideration the factors identified in Section 53A-20-110 and other factors identified by USOE staff or the Division of Facilities Construction and Management Administration staff.

B. LEAs shall review and take into consideration the school construction guidelines when planning and prior to proceeding with public school construction.

**R277-471-[9]11. Enforcement.**

A. [~~School districts and charter schools~~] An LEA which fails to comply with the provisions of this rule [are] is subject to

interruption of state [~~aid~~] dollars by the Board [~~in accordance~~] consistent with Section 53A-1-401(3) and 53A-17a-144(4)(d).

(1) If an [~~school district or charter school~~] LEA fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the Superintendent shall, as directed by the Board, send the school district superintendent or local charter school director [~~shall receive~~] notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE [~~shall~~] may, as directed by the Board, interrupt the Minimum School Program fund transfer process to the following extent:

(a) 10 percent of the total monthly Minimum School Program transfer amount the first month;

(b) 25 percent in the second month; and

(c) 50 percent in the third and subsequent months.

B. If the USOE interrupt[ed]s the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month); [~~and~~]

(2) inform the [~~appropriate~~] Board [~~Committee~~] at its next regularly scheduled [~~Committee~~] meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. An LEA may be subject to a [A] nonrefundable fine in the amount of one half of one percent of the total construction costs [~~shall be assessed school districts and charter schools that~~] if an LEA fails to report a [~~new or remodeling~~] public school construction project[s] consistent with Section 53A-20 and the Resource Manual to the USOE [~~that exceed \$99,999 before construction begins~~].

(1) The USOE, under the direction of the Board, shall deduct [N] nonrefundable fine amounts [~~shall be deducted~~] from the respective [~~school district's and charter school's~~] LEA's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) The USOE shall deposit [S] school district nonrefundable fine amounts [~~collected by USOE shall be deposited~~] into the School Building Revolving Account; and

(b) The USOE shall deposit charter school nonrefundable fine amounts [~~collected by USOE shall be deposited~~] into the Charter School Building Subaccount within the School Building Revolving Account.

[~~Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.~~]

**R277-471-[10]12. Appeals Procedure for Nonrefundable Fines.**

A. The Board designates the procedure outlined in R277-471-12 as an informal adjudicative proceeding, under Section 63G-4-203.

[A] B. [~~School districts or local charter school~~] LEA boards may appeal a fine assessed under R277-471-[9]11C consistent with the following:

(1) ~~An LEA may not appeal a fine [may not be appealed]~~ until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) ~~An LEA must file [F]the appeal [must be filed]~~ within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) ~~An LEA shall deliver or provide electronically [F]the appeal [shall be delivered or provided electronically]~~ to the USOE as provided by the appeal form.

(5) ~~An LEA shall provide, as stated on the form, [The appeal form shall require]~~ an explanation of unanticipated or compelling circumstances that resulted in the local board's or charter school's failure to report new construction or remodeling projects ~~[that exceed \$99,999]as required.~~

(6) ~~The school district superintendent or local charter board chair shall provide [The appeal form shall require]~~ a notarized statement ~~[from the district superintendent or local charter board chair]~~ that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the ~~[local school board/local charter]~~ LEA board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or ~~[school district/charter school]~~ LEA business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

~~[B]C.~~ The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

~~[E]D.~~ Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further administrative appeal opportunity.

### **R277-471-~~8~~13. Annual Construction and Inspection Conference.**

A. The USOE shall sponsor an annual school construction conference for representative(s) from each ~~[school~~

~~district, charter school,]LEA~~ and interested persons involved in the school building construction, design, operation, maintenance, safety and related industr[~~y~~]ies.

~~B. [The e]Conference presenters and participants shall [:~~  
~~(1)] provide and discuss~~ current information ~~[on-]~~ and training on public school building construction and inspection, including:

~~(1)~~ the design, construction, operation and the inspection process of public school buildings;

~~(2)~~ ~~[provide training on]~~ public school building site selection [design, construction,]

~~(3)~~ ~~[lowest]best~~ building life-cycle costing ~~[and];~~

~~(4)~~ construction inspection ~~[matters as determined by the USOE]~~ requirements and schedules; and

~~([3]5)~~ ~~[offer and discuss]~~ information to improve the existing public school building design, construction, operation and safety inspection program.

### **R277-471-14. School Plant Capital Outlay Report.**

A. The Board shall prepare an annual School Plant Capital Outlay Report of all school construction projects completed and under construction, including information on the number and size of buildings.

B. An LEA shall prepare and submit an annual School Plant Capital Outlay Report to the Utah Public Finance website, consistent with Section 63A-3-402, for each new school building construction project or significant school remodel, completed between July 1, 2004 and May 13, 2014. An LEA shall submit the report no later than May 15, 2015. For new school building projects or significant remodel projects completed after May 13, 2014, the LEA shall provide the School Plant Capital Outlay Report to the Division annually, by a date designated by the Division.

C. The School Plant Capital Outlay Report shall include information required under Section 63A-3-402(6)(c).

D. The LEA shall report to the Utah Public Finance website the actual cost, fee, or other expense for any figures required to be reported under R277-471-14B.

E. The report shall be in a format, including any raw data or electronic formatting, prescribed by applicable Division policy.

F. The Division may require an LEA to provide further itemized data on information listed in Section 63A-3-402(b) or R277-471-14B.

**KEY: educational facilities**

**Date of Enactment or Last Substantive Amendment: [July 8, 2008]2014**

**Notice of Continuation: September 9, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-20-104; 53A-20-104.5; 10-9a-305; 17-27a-105; 53A-17a-144(4)(d)**

**Education, Administration  
R277-504**

**Early Childhood, Elementary,  
Secondary, Special Education (K-12),  
Communication Disorders, Speech-  
Language Pathologist and Speech-  
Language Technician, and Preschool  
Special Education (Birth-Age 5)  
Licensure**

**NOTICE OF PROPOSED RULE**  
(Repeal and Reenact)  
DAR FILE NO.: 38866  
FILED: 09/15/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is repealed and reenacted to provide changes in the manner in which teacher preparation programs are approved, and to provide details of the requirements the Utah State Board of Education (Board) establishes for its approval of teacher preparation programs in specific license areas of concentration.

**SUMMARY OF THE RULE OR CHANGE:** The reenacted rule provides revised definitions; re-titles several areas of concentration; removes three specialist licensing areas; provides details of the requirements for approval of teacher preparation programs in specific license areas of concentration including student teaching and internships; and removes Communication Disorders, Speech-Language Pathologist and Speech-Language Technician license areas of concentration from Rule R277-504 and inserts into Rule R277-506. (DAR NOTE: The proposed amendment to Rule R277-506 is under DAR No. 38867 in this issue, October 1, 2014, of the Bulletin.)

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The reenacted rule provides requirements for teacher preparation program approval and defines specific areas of focus within license areas of concentration. These changes will likely not result in costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The reenacted rule provides requirements for teacher preparation program approval and defines specific areas of focus within license areas of concentration. These changes will likely not result in costs or savings to local government.

◆ **SMALL BUSINESSES:** The reenacted rule provides requirements for teacher preparation program approval and defines specific areas of focus within license areas of concentration. These changes will likely not result in costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The reenacted rule provides requirements for teacher preparation program approval and defines specific areas of focus within license areas of concentration. These changes will likely not result in costs or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The reenacted rule provides requirements for teacher preparation program approval and defines specific areas of focus within license areas of concentration. These changes will likely not result in compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014**

**AUTHORIZED BY:** Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.**

~~[R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) Licensure.~~

~~**R277-504-1. Definitions.**~~

- ~~\_\_\_\_\_ A. "Board" means the Utah State Board of Education.~~
- ~~\_\_\_\_\_ B. "Communication Disorders license area of concentration" means the areas of content required for providing services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.~~

C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal programs below kindergarten level.

D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons must meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. Establishment of this standard was a collaborative initiative between the Department of Health and the State Office of Education. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, a person must have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.

E. "Elementary (1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.

H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or State recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

I. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate agreement, to candidates who have also met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

M. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary Certificates carry endorsements for the areas in which the holder is qualified.

N. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which permits the holder to teach students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which permits the holder to teach students with severe learning and behavior problems;

(3) Hearing Impaired Endorsement which permits the holder to teach students who are deaf or other hearing impaired;

(4) Visually Impaired Endorsement which permits the holder to teach students who are blind or other visually impaired.

O. "Speech-Language Pathologist (SLP) license" means a speech-language pathologist area of concentration required for teaching students with communication disorders, birth through age 21. A speech-language pathologist license carries a Speech-Language Pathologist endorsement.

P. "Speech-language technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.

Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R. "USOE" means Utah State Office of Education.

#### **R277-504-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which must be met for each of these areas by a teacher preparation institution in order to receive Board approval of its program for teachers.

#### **R277-504-3. Level 1 License.**

A. The Level 1 license is issued for three years.

B. During the Level 1 provisional period, the employing school district shall supervise the candidate closely and make special assistance available.

C. An applicant for the Level 1 Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist, Speech-Language Technician, and Preschool Special Education (Birth-Age 5) license area of concentration shall have done all of the following:

(1) graduated with a bachelor's degree, or in the case of Communication Disorders and Speech-Language Pathologist applicants, a masters degree or equivalent, from a nationally or regionally accredited institution consistent with R277-503;

(2) completed a Board-approved program for the preparation of Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Preschool Special Education

~~(K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) specialists;~~

~~(3) been recommended by an institution whose program of preparation is Board-approved and accredited consistent with R277-503.~~

~~D. If a teacher has taught for three years in Utah, a Level 1 license can only be renewed consistent with the following:~~

~~(1) the employing LEA has requested a one-year extension consistent with Entry Years Enhancement (EYE); or~~

~~(2) an individual has continuous experience as a SLP in a clinical setting.~~

~~E. The Level 1 Secondary License~~

~~(1) A Level 1 secondary license with subject endorsement(s) is valid in grades six through twelve.~~

~~(2) The 6-12 license requires a major or major equivalent, but the teacher cannot teach in a self-contained class.~~

~~(3) An applicant for the Level 1 Secondary license shall have completed an approved teaching major consistent with subjects taught in Utah secondary schools. The license is endorsed for all subjects in which the applicant has at least a minor or has completed equivalent training.~~

~~(a) A teaching major requires not fewer than 30 semester hours (45 quarter hours) of credit in one subject.~~

~~(b) A teaching minor requires not fewer than 16 semester hours (24 quarter hours) of credit in one subject.~~

~~F. A Preschool Special Education (Birth-Age 5) Level 1 License:~~

~~(1) Applicants for the Preschool Special Education (Birth-Age 5) license shall have completed a Board-approved program, consistent with R277-503, for teaching infants, toddlers, and preschool-age children with disabilities.~~

~~(2) Hearing Impaired/Vision Impaired (HI/VI) Endorsements required under this rule shall be issued to meet "the highest requirements in the State applicable to a specific profession or discipline" required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.~~

~~(a) Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (birth-age 5) or vision impaired (birth-age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Hearing Impaired (Birth-Age 5) or Vision Impaired (Birth-Age 5) or both.~~

~~(b) All professional personnel teaching children with HI/VI in self-contained, categorical settings shall meet the standards in R277-504-31(1).~~

~~(c) Teachers who hold an equivalent license from a state other than Utah shall be required to meet the standards referred to in R277-504-31(2)(d) upon receipt of an initial Utah license.~~

~~(d) All professional personnel teaching preschool-aged children who are HI/VI in self-contained, categorical classrooms as of January 1998, shall be required to complete a Board-approved training program, consistent with R277-503, making them eligible for the Birth-Age 5 HI/VI endorsements under this rule.~~

~~(e) This training shall be developed based on an analysis of presently-held licenses and endorsements, teaching experiences, and training activities as compared to the requirements of the new standards.~~

~~G. Applicants for Special Education (K-12) licenses shall have completed a Board-approved program for teaching students with mild/moderate, severe, hearing, or visual impairments. The Special Education license (K-12) is endorsed for any area in which the program has been completed. Educators who hold Special Education licenses may also be issued endorsements.~~

~~H. Applicants for Communication Disorders license areas of concentration (audiologist) shall have completed a Board-approved program for teaching pupils with communication disorders which includes the master's degree or 30 semester hours earned after meeting requirements for a bachelor's degree.~~

~~I. Speech-Language Pathologist (SLP) License Area of Concentration~~

~~(1) Qualifications: To qualify for the SLP area of concentration, an individual shall have completed a Board-approved program for teaching students with speech/language impairments. Such programs include:~~

~~(a) a master's degree and Certificate of Clinical Competence (CCC); or~~

~~(b) a master's degree; or~~

~~(c) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.~~

~~(2) An individual who has completed a Board-approved bachelor's degree program in communication disorders at an accredited higher education institution, and acquired the competencies necessary for assignment as a graduate student intern, as determined by the higher education institution, may receive a one-year letter of authorization from the USOE.~~

~~(a) This letter of authorization shall be issued under R277-504-31(2)(d), and may be renewed annually for up to three years if:~~

~~(i) the applicant has been admitted to an accredited graduate program at the time the license is issued; and~~

~~(ii) the applicant files with the USOE evidence of completion of at least nine quarter hours (six semester hours) of credit applicable to the acquisition of a master's degree or the equivalent in communication disorders each year that the license is to remain in effect.~~

~~(b) A graduate student intern shall have been recommended by a higher education institution whose program of preparation is Board-approved. The graduate student intern shall be appropriately supervised by a speech-language pathologist.~~

~~(3) An individual with a letter of authorization may perform fully licensed speech-language functions, as directed, solely within the confines of the public school.~~

~~(4) This area of concentration does not qualify the individual to provide services outside of the educational setting.~~

~~J. Speech-Language Technician (SLT) License Area of Concentration~~

~~(1) To qualify for the SLT area of concentration, an individual shall have completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE. Additional professional development shall be completed prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.~~

~~(2) A speech-language technician shall work under the supervision of a speech-language pathologist who accepts full responsibility for the work of the speech-language technician.~~

~~(3) The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.~~

~~(4) An individual may perform speech-language technician functions and duties solely within the confines of the public school.~~

~~(5) This area of concentration does not qualify the individual to provide services outside of the educational setting.~~

~~(6) The speech-language technician's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.~~

~~(7) The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.~~

~~(8) Documented clinical employment may be substituted at a school district's discretion for employment in education.~~

#### **R277-504-4. Level 2 License.**

~~A Level 2 license is issued after:~~

~~(1) a candidate completes three years of successful professional teaching;~~

~~(2) a candidate completes all other Entry Years Enhancements (EYE) requirements consistent with R277-522; and~~

~~(3) the employing public school district or accredited private school recommends the candidate to receive the Level 2 license, based on information from peers and supervisors.~~

#### **R277-504-5. Special Validations.**

~~A. An individual holding a Level 2 Elementary license and for whom the employing district has requested a letter of authorization assigning the individual to a kindergarten position may qualify for an Early Childhood license by completing an approved program of early childhood education at an accredited institution of higher education or the Alternative Routes to Licensure Program (ARL). The program may also include district professional development. Practicum experiences should be in the regularly assigned kindergarten classroom of the applicant for the license.~~

~~B. An Elementary teacher may be licensed in grades K-3, K-6, or 1-8.~~

~~(1) The 1-8 license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.~~

~~(2) A teacher shall be endorsed in a subject by the USOE to teach assigned subjects at the 7-8 grade level.~~

~~(3) The Middle Level license (5-9) continues to be valid; however, a middle level license (5-9) has not been issued since April 1, 1989 and is no longer required of teachers or issued to teachers assigned to the middle school.~~

#### **R277-504-6. General Standards for Approval of Programs for the Preparation of Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education Teachers.**

~~A. The teacher preparation program of an institution may be approved by the Board if it:~~

~~(1) meets the standards prescribed in the NCATE Professional Speciality Association or 90 percent of the completers pass the Board-approved content assessments; and~~

~~(2) requires the study of:~~

~~(a) state laws and policies which specify content, values, and other expectations of teachers and other professionals in the school system;~~

~~(b) techniques for evaluating student progress, including the use and interpretation of both standardized and teacher-made tests; and~~

~~(c) knowledge and skills designed to meet the needs of students with disabilities in the regular classroom. These shall include the following domains:~~

~~(i) knowledge of disabilities;~~

~~(ii) knowledge of the role of nonspecial education teachers in the education of students with disabilities;~~

~~(iii) skills in assessing the educational needs and progress of students with disabilities in the regular education classroom;~~

~~(iv) skills in the implementation of an educational program for students with disabilities in the regular classroom; and~~

~~(v) skills in monitoring student progress.~~

~~B. The standard requiring the application of methods and techniques in a clinical setting is met by student teaching carried out under the direction of the institution. The following may be accepted as totally or partially fulfilling this requirement:~~

~~(1) two years of full-time contract teaching experience in a regular classroom situation in kindergarten through grade twelve in a public or accredited private or parochial school may totally fulfill the requirement;~~

~~(2) teaching in an alternative school or similar school may be accepted for up to one-half of the student teaching requirement;~~

~~(3) teaching in a community college, trade-technical college, or other post-secondary teaching experiences may be accepted for up to one-half of the student teaching requirement;~~

~~(4) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;~~

~~(5) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and~~

~~(6) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.~~

#### **R277-504-7. Standards for Approval of Programs for Early Childhood and Elementary Teachers.**

~~The standards shall be applied to the specific age group or grade level for which the program of preparation is designed. The teacher preparation program of an institution may be approved by the Board if it:~~

~~A. meets the standards prescribed in the NCATE Professional Speciality Association, including a student teaching experience; and~~

~~B. requires study and experiences needed in disciplines which provide content knowledge needed to teach:~~

~~(1) language development and listening, speaking, writing, and reading, with emphasis on language development;~~

~~(2) mathematics;~~

~~(3) biological and physical science and health;~~

- \_\_\_\_\_ (4) social studies; and  
 \_\_\_\_\_ (5) fine arts.

**R277-504-8. Standards for Approval of Program for Preparing Teachers in Major and Minor Fields.**

\_\_\_\_\_ The teacher preparation program of an institution may be approved by the Board if it meets the general and specific standards prescribed in the NCATE Professional Speciality Association, including a student teaching experience.

**R277-504-9. Standards for Approval of Programs for Special Education (K-12) and Preschool Special Education (Birth-Age 5) Teachers.**

\_\_\_\_\_ The teacher preparation program of an institution may be approved by the Board if it meets the following standards:

\_\_\_\_\_ A. Mild/Moderate Endorsement: The teacher preparation program of an institution for mild/moderate endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Speciality Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

\_\_\_\_\_ B. Severe Disabilities Endorsement: The teacher preparation program of a higher education institution for severe disabilities endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Speciality Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

\_\_\_\_\_ C. Hearing Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association or if 90 percent of the program completers passes the Board-approved content tests for hearing impaired specialists.

\_\_\_\_\_ D. Visually Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for visually impaired specialists.

**R277-504-10. Standards for Approval of Programs for Communication Disorders and Speech-Language Pathologist Licenses.**

\_\_\_\_\_ A. Speech Pathology Area of Concentration: The preparation program for Speech-Language Pathologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association.

\_\_\_\_\_ B. Audiology Endorsement: The preparation program for audiologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association.]

**R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure.**

**R277-504-1. Definitions.**

\_\_\_\_\_ A. "Board" means the Utah State Board of Education.

\_\_\_\_\_ B. "Council for Exceptional Children" is an international professional organization dedicated to improving the educational

success of both individuals with disabilities and individuals with gifts and talents. 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.

\_\_\_\_\_ C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal public school programs below kindergarten level.

\_\_\_\_\_ D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons shall meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, an individual shall have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.

\_\_\_\_\_ E. "(1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

\_\_\_\_\_ F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

\_\_\_\_\_ G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.

\_\_\_\_\_ H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, license, registration, or other comparable requirement that applies to that profession or discipline.

\_\_\_\_\_ I. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

\_\_\_\_\_ J. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

\_\_\_\_\_ K. "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

\_\_\_\_\_ L. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

M. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary license areas carry endorsements for the areas in which the holder is qualified to provide instruction.

N. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which indicates that the holder's preparation focused on teaching students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which indicates that the holder's preparation focused on teaching students with severe learning and behavior problems;

(3) Deaf and Hard of Hearing Endorsement which indicates that the holder's preparation focused on teaching students who are deaf or other hearing impaired; and

(4) Blind and Visually Impaired Endorsement which indicates that the holder's preparation focused on teaching students who are blind or other visually impaired.

O. "USOE" means the Utah State Office of Education.

#### **R277-504-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which the Board expects a teacher preparation institution to meet in specific areas for the institution to receive Board approval of the program.

#### **R277-504-3. General Standards for Approval of Programs for the Preparation of Teachers.**

A. The Board may approve the educator preparation program of an institution if the institution:

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

(2) prepares candidates to teach the Utah Core Standards as established by the Board;

(3) requires candidates to maintain a cumulative university GPA of 3.0 and receive a C or better in all education related or major required content courses;

(4) requires the study of:

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

(b) knowledge and skills designed to meet the needs of students with disabilities in the regular classroom. Knowledge and skills shall include the following domains:

(i) knowledge of disabilities under IDEA;

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

(iii) skills in implementing and assessing the results of interventions intended to assist in the identification of students with disabilities.

(iv) skills in assessing the educational needs and progress of students with disabilities in the regular education classroom; and

(v) skills in the implementation of an educational program with accommodations and modifications established by an IEP for students with disabilities in the regular classroom; and

(c) knowledge and skills designed to meet the needs of diverse student populations in the regular classroom. These skills for diverse student populations shall include the skills to:

(i) allow teachers to create an environment using a teaching model that is sensitive to multiple experiences and diversity;

(ii) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs; and

(iii) incorporate tools of language development into planning and instruction for English language learners and support development of English proficiency; and

(5) requires a student teaching culminating experience that:

(a) requires a minimum of 400 clock hours with at least 200 clock hours in a single placement;

(b) requires that student teachers meet the same contract hours as licensed teachers in the same LEA;

(c) includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable student teaching placement in one or more of the candidate's endorsement areas is available; or

(ii) the candidate is seeking a license in Elementary (1-8) and is completing an elementary student teaching placement, but has also completed the USOE course requirements for an endorsement;

(d) includes intermittent supervision and evaluation by institution personnel;

(e) includes direct supervision of the candidate by a classroom teacher that:

(i) has been jointly selected by the institution student teaching placement officer and the LEA-designated authority over student teaching placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) has received training from the institution on the role and responsibilities of a classroom mentor teacher for student teachers, including the standards of R277-515;

(f) include meaningful self-reflection with review and feedback from both the classroom mentor teacher and institution personnel; or

(6) Requires an internship culminating experience that:

(a) consists of full-time employment as an educator for one school year with a minimum of 1260 clock hours at a single school site;

(b) requires that interns meet the same contract teaching hours as licensed teachers in the same LEA;

(c) includes placement in the major content or licensure area in which the candidate shall be licensed;

(d) where possible, includes placement in all content or licensure areas in which the candidate shall be licensed unless:

\_\_\_\_\_ (i) no viable internship in one or more of the candidate's non-major endorsement areas could be found; or

\_\_\_\_\_ (ii) the candidate is seeking licensure in Elementary (1-8) and is completing an elementary internship, but has also completed the USOE course requirements for an endorsement;

\_\_\_\_\_ (e) includes intermittent supervision and evaluation by institution personnel;

\_\_\_\_\_ (f) includes an LEA assigned mentor that;

\_\_\_\_\_ (i) has been jointly selected by the institution internship placement officer and the LEA-designated authority over internship placement; and

\_\_\_\_\_ (ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent;

\_\_\_\_\_ (g) includes meaningful self-reflection with review and feedback from both the assigned mentor and institution personnel;

B. The Board may accept the following for an individual candidate as completely or partially satisfying the student teaching/internship requirement:

\_\_\_\_\_ (1) one year of full-time contract teaching experience in a teaching position as defined in R277-503-4(C)(4) in a public or accredited private school in the candidate's proposed licensure content areas may completely satisfy the requirement;

\_\_\_\_\_ (2) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;

\_\_\_\_\_ (3) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

\_\_\_\_\_ (4) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

#### **R277-504-4. Early Childhood Education (K-3) and Elementary (K-6) License Areas.**

A. The Board may approve the Early Childhood Education (K-3), Elementary (K-6), Elementary (1-8) teacher preparation program of an institution if the program:

\_\_\_\_\_ (1) is aligned with the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs or the 2007 Association for Childhood Education International Standards for Elementary Level Teacher Preparation, as appropriate; and

\_\_\_\_\_ (2) requires study and experiences which provide 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; and

\_\_\_\_\_ (3) includes coursework specifically designed to prepare teachers:

\_\_\_\_\_ (a) in the science of reading instruction including phonemic awareness, phonics, fluency, vocabulary and comprehension;

\_\_\_\_\_ (b) in the science of mathematics instruction including quantitative reasoning, problem solving, representation, and numeracy;

\_\_\_\_\_ (c) with the technical skills to utilize common education technology;

\_\_\_\_\_ (d) to integrate technology to support and meaningfully supplement the learning of students;

\_\_\_\_\_ (e) to teach effectively in traditional, online-only, and blended classrooms;

\_\_\_\_\_ (f) to design, administer, and review educational assessments in a meaningful and ethical manner;

\_\_\_\_\_ (g) in early childhood development and learning, if it is an Early Childhood Education (K-3), or Elementary (K-6); and

\_\_\_\_\_ (h) in a specific content area resulting in an endorsement added to the license area, if it is an Elementary (1-8) program.

B. The standards shall be applied to the specific age group or grade level for which the program of preparation is designed.

\_\_\_\_\_ (1) An Early Childhood Education (K-3) program shall focus primarily on early childhood development and learning.

\_\_\_\_\_ (2) An Elementary (K-6) shall include both early childhood development and learning and elementary content and pedagogy.

\_\_\_\_\_ (3) An Elementary (1-8) shall focus primarily on elementary content and pedagogy.

C. A teacher holding an Elementary (1-8) license area may earn an Early Childhood (K-3) license area by completing specific coursework requirements established by USOE.

D. An Elementary (1-8) license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

E. An Elementary (1-8) license permits the teacher to teach specific content courses at the 7th or 8th grade level only if the teacher's license includes the appropriate endorsement.

#### **R277-504-5. Secondary (6-12) License Area.**

A. A Secondary (6-12) license area with endorsement(s) is valid in grades six through twelve.

B. A Secondary (6-12) license area requires a major or major equivalent in a content area, but the teacher cannot teach in an elementary self-contained class.

C. The Board may approve the secondary educator preparation program of an institution if the program:

\_\_\_\_\_ (1) is an undergraduate level program and requires candidates to have completed:

\_\_\_\_\_ (a) an approved content area or teaching major consistent with subjects taught in Utah secondary schools; and

\_\_\_\_\_ (b) content coursework reasonably equivalent to that required for individuals completing a non-teaching degree in the subject; or

\_\_\_\_\_ (2) Is a graduate level program and requires candidates to have completed:

\_\_\_\_\_ (a) a bachelor's degree or higher from an accredited university; and

\_\_\_\_\_ (b) coursework equivalent to the minimum requirements for an endorsement as established by USOE, including the appropriate content knowledge assessment; and

\_\_\_\_\_ (3) includes coursework specifically designed to prepare candidates:

\_\_\_\_\_ (a) with the technical skills necessary to utilize common education technology;

\_\_\_\_\_ (b) to integrate technology to support and meaningfully supplement the learning of students;

(c) to teach effectively in traditional, online-only, and blended classrooms;

(d) to design, administer, and review educational assessments in a meaningful and ethical manner; and

(e) to include literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards.

D. After completing a Board-approved Secondary (6-12) educator preparation program, the license area shall be endorsed for all subjects in which the candidate has met the course requirements for the endorsement as established by USOE.

(1) A content area or teaching major requires not fewer than 30 semester hours of credit in one content area.

(2) An endorsement requires not fewer than 16 semester hours of credit in one content area.

**R277-504-6. Special Education (K-12+) and Preschool Special Education (Birth-Age 5).**

A. The Board may approve an institution's special education teacher preparation program if the program is aligned with the 2011 Council for Exceptional Children Special Education Standards for Professional Practice and is focused in one or more of the following special education areas:

(1) Mild/Moderate Disabilities

(2) Severe Disabilities

(3) Deaf and Hard of Hearing;

(4) Blind and Visually Impaired; or

(5) Preschool Special Education (Birth-Age 5).

B. The Board may issue teachers who hold Special Education (K-12+) license areas additional endorsements if all endorsement requirements are met. Teachers who hold only a Special Education (K-12+) license area may only be assigned as a teacher of record of students with disabilities.

C. The Board may approve a special education preparation program of an institution if the program includes coursework specifically designed to train candidates to:

(1) understand the legal and ethical issues surrounding special education;

(2) work with other school personnel to implement and evaluate academic and behavior interventions for the purpose of identification of students with disabilities;

(3) provide the necessary specialized instruction, as per IEPs, to students with disabilities, including

(a) core content and content specific pedagogy;

(b) knowledge of the role of regular education teachers, related service providers, and paraeducators in the education of students with disabilities;

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

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

(e) skills in the implementation of an specialized educational program with accommodations and modifications, as needed, that supplements the Utah Core Standards, as per an IEP, for students with disabilities.

D. The Board shall issue Blind and Visually Impaired/Deaf and Hard of Hearing Endorsements required under this rule to meet the highest requirements in the State applicable to a

specific profession or discipline required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.

E. Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (Birth-Age 5) or vision impaired (Birth-Age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Deaf and Hard of Hearing (Birth-Age 5) or Blind and Visually Impaired (Birth-Age 5) or both.

**R277-504-7. Miscellaneous.**

The Middle Level license (5-9) continues to be valid; however, the Board has not issued a middle level license (5-9) since April 1, 1989 and it is no longer required of teachers or issued to teachers assigned to the middle school.

**KEY: teacher licensing, professional education[~~, accreditation~~]  
Date of Enactment or Last Substantive Amendment: [~~July 8, 2008~~]2014**

**Notice of Continuation: September 2, 2014**

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

Education, Administration  
**R277-506**  
School Psychologists, School Social  
Workers, and School Counselors  
Licenses and Programs

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38867

FILED: 09/15/2014

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-506 is amended to insert Communication Disorders, Speech-Language Pathologist and Speech-Language Technician license areas of concentration. These licensed specialists were previously licensed under Rule R277-504; this rule is in the process of being repealed and reenacted. The amended rule also provides revised terminology and language as necessary. (DAR NOTE: The proposed repeal and reenactment of Rule R277-504 is under DAR No. 38866 in this issue, October 1, 2014, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Communication Disorders, Speech-Language Pathologist and Speech-Language Technician license areas of concentration is added to Rule R277-506 as Rule R277-506 focuses on student support services licensure and is the most appropriate place for the language.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments to Rule R277-506 insert license areas of concentration language and make minor terminology and language changes as necessary which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The amendments to Rule R277-506 insert license areas of concentration language and make minor terminology and language changes as necessary which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments to Rule R277-506 insert license areas of concentration language and make minor terminology and language changes as necessary which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-506 insert license areas of concentration language and make minor terminology and language changes as necessary which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-506 insert license areas of concentration language and make minor terminology and language changes as necessary which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.**

**R277-506. School Psychologists, School Social Workers,[-and] School Counselors, Communication Disorders (Audiologists), Speech-Language Pathologists, and Speech-Language Technicians Licenses and Programs.**

**R277-506-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.
- C. "Communication Disorders license area of concentration" means the area of content required for an audiologist to provide services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.
- [E]D. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.
- [D]E. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.
- F. "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.
- [E]G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.
- [F]H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.
- [G]I. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: student assessment and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.
- J. "Speech-Language Pathologist (SLP) license" means a Speech-Language Pathologist area of concentration required for teaching students with communication disorders, birth through age 21. A Speech-Language Pathologist license carries a Speech-Language Pathologist endorsement.
- K. "Speech-Language Technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.
- [H]L. "Temporary license" means a designation that an applicant has met all requirements of Section 3A(1), below.
- [I]M. "USOE" means the Utah State Office of Education.

**R277-506-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-402(1)(a) which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the standards for obtaining licenses and other credentials issued by the Board for employment in the public schools as school psychologists, school social workers, ~~and~~ school counselors, audiologists, speech-language pathologists, and speech-language technicians; and

(2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists, school social workers, ~~and~~ school counselors, audiologists, speech-language pathologists, and speech-language technicians.

**R277-506-3. School Psychologist.**

A. A ~~n-applicant~~ candidate for the Level 1 School Psychologist License area of concentration shall have:

(1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;

(2) demonstrated competence in the following:

(a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;

(b) directing psychological and psycho-educational assessments and intervention including all areas of exceptionality;

(c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;

(d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;

(e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;

(f) coordinati~~ng~~on and work~~ing~~ with community-school relations and multicultural education programs and assessment; and

(g) the us~~ing~~e and evaluati~~ng~~on of tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;

(3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and

(4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.

B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Level 1 License.

C. A ~~n-applicant~~ candidate for the Level 2 School Psychologist License area of concentration shall:

(1) satisfy requirements for the Level 1 school psychologist License;

(2) have completed at least two years of successful experience as a school psychologist under a Level 1 School Psychologist License area of concentration or its equivalent; and

(3) have been recommended by the employing ~~school district~~ LEA with consultation from a teacher education institution.

D. The Board may approve the school psychologist preparation program of an institution ~~may be approved by the Board~~ if ~~it~~ the program meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE.

**R277-506-4. School Social Workers.**

A. A ~~n-applicant~~ candidate for the Level 1 School Social Worker License area of concentration shall have:

(1) completed a Board approved program for the preparation of school social workers including a Master of Social Work degree from an accredited institution;

(2) demonstrated competence in the following:

(a) articulati~~ng~~on of the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;

(b) the understanding of the organization, administration, and evaluation of a school social work program;

(c) social work practice with individuals, families, and groups;

(d) the develop~~ing~~ment and interpret~~ing~~ation on of a social history and psycho-social assessment of the individual and the family system;

(e) the analy~~zing~~sis of family dynamics and experience in counseling and conflict management and resolution;

(f) the communication and consult~~ing~~ation of skills in working with the client, the family, the school staff, and community and social agencies;

(g) the understanding of the teaching/learning environment;

(h) the analy~~zing~~sis of school law and child welfare issues;

(i) the us~~ing~~e of social work methods to facilitate the affective domain of education and the learning process; and

(j) ~~understanding~~ the knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.

(3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and

(4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.

B. A ~~n-applicant~~ candidate for the Level 2-Standard School Social Worker License area of concentration shall have:

(1) completed at least three years of successful experience as a school social worker under a Level 1 School Social Worker License area of concentration or its equivalent; and

(2) been recommended by the employing ~~[school district]~~LEA with consultation from a teacher education institution.

C. The Board ~~may approve the~~ social worker program of an institution ~~[may be approved by the Board]~~ if ~~[#]~~the program meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in R277-506-3D.

**R277-506-5. School Counselors.**

There are three levels of licensure for a K-12 school counselor:

A. ~~The Board shall issue a School Counselor Professional Educator License]~~ Level 1 License ~~[is a license issued]~~:

(~~3~~)1) ~~[This license is issued]~~to counselors who are beginning their professional careers who have completed an approved 600 hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing)~~[-]; and~~

(~~1~~)2) upon completion of an accredited counselor education program; or

(~~2~~)3) to ~~[persons]~~candidates applying for licensure under interstate agreements.

B. School Counselor Professional Educator License Level 2 is:

(1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and

(2) is valid for five years.

C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:

(1) is currently enrolled in the program;

(2) has completed 30 semester hours of course work, including successful completion of a practicum; and

(3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.

(a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.

(b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.

**R277-506-6. Communication Disorders (Audiologist).**

A. A candidate shall complete a Board approved program for teaching students with communication disorders, which includes a master's degree, to qualify for the Communication Disorders license areas of concentration (audiologist).

B. The Board may approve the preparation program for audiologists of a higher education institution if the program is aligned with the standards prescribed by ASHA.

**R277-506-7. Speech-Language Pathologist (SLP).**

A. A candidate shall complete a Board approved program for teaching students with speech/language impairments to qualify for the SLP area of concentration. Such programs include:

(1) a master's degree and Certificate of Clinical Competence (CCC); or

(2) a master's degree; or

(3) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.

B. The Board may approve the preparation program for speech-language pathologists of a higher education institution if the program is aligned with the standards prescribed by ASHA.

C. The Board may license a candidate who has been accepted into a Board approved program and the candidate may be an SLT as described in R277-506-1K. The duties and responsibilities of the candidate may not exceed the candidate's current preparation.

D. This area of concentration does not qualify the individual to provide services outside of the educational setting.

**R277-506-8. Speech-Language Technician (SLT).**

A. a candidate shall complete a Board approved bachelor's degree in communication disorders and additional training as required by the USOE to qualify for the SLT area of concentration. A candidate shall complete additional professional development prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.

B. A SLT shall work under the supervision of a SLP who accepts full responsibility for the work of the SLT.

C. The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.

D. A candidate for the SLT area of concentration may perform SLT functions and duties solely within the confines of the public school.

E. The SLT's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.

F. The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.

G. An LEA may substitute documented clinical employment at the LEA's, for employment in education.

**KEY: educational program evaluations, professional competency, educator licensing**

**Date of Enactment or Last Substantive Amendment: ~~[October 8, 2008]~~2014**

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

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-6-103; 53A-1-401(3)**

**Education, Administration  
R277-800  
Utah Schools for the Deaf and the Blind**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38868

FILED: 09/15/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-800 is amended to provide updated language regarding assessments.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-800 provide changes to the alternate assessment used in Utah and aligned with the Special Education Rules and the Interagency Agreement between the Utah State Office of Education, Utah Schools for the Deaf and the Blind (USDB), and local education agencies (LEAs). As a result, portions of the rule describing responsibility and cost for USDB services are removed and are included in the Interagency Agreement.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-25B-201 and Subsection 53A-1-401(3)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates USDB GUIDELINES, published by Utah School for the Deaf and Blind, 09/05/2014

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendments to Rule R277-800 provide updated language regarding assessments, and terminology and grammatical changes, which likely will not result in costs or savings to the state.
- ◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-800 provide updated language regarding assessments, and terminology and grammatical changes, which likely will not result in costs or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments to Rule R277-800 provide updated language regarding assessments, and terminology and grammatical changes, which likely will not result in costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-800 provide updated language regarding assessments, and terminology and grammatical changes, which likely will not result in costs or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to Rule R277-800 provide updated language regarding assessments, and terminology and grammatical changes, which likely will not result in compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014**

**AUTHORIZED BY:** Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.****R277-800. Utah Schools for the Deaf and the Blind.****R277-800-1. Definitions.**

A. "Accessible media producer" means companies or agencies that create fully-accessible specialized, student-ready formats for curriculum materials, such as Braille, large print, audio, or digital books.

B. "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind with members, responsibilities, and other provisions under Section 53A-25b-203 and R277-800-4.

C. "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing. These assessments may include the following areas of focus:

(1) valid, reliable and appropriate assessments given to determine eligibility for placement and services by a team of qualified professionals and the student's parent(s);

(2) functional assessments accomplished by observation and measurement of daily living skills and functional use of vision or hearing;

(3) academic evaluations as part of the Utah Performance Assessment System for Students (U-PASS), ~~[eriterion reference tests (CRTs), or the Utah]including an [A]alternat[ive]e [A]assessment with appropriate accommodations as indicated on the individualized education program (IEP).~~

D. "Board" means the Utah State Board of Education.

E. "Campus-Based Program" means a program provided by USDB that offers an alternative to an outreach program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided by qualified USDB staff at a USDB site.

F. "The Chafee Amendment to the Copyright Act, 17 U.S.C. Section 121" (Chafee Amendment) is a federal law that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner. Authorized entities are governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

G. "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

H. "Consultation" means a meeting for discussion or the seeking of advice.

I. "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400, Part B, or Section 504 of the Rehabilitation Act of 1973.

J. "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. The definition of deafblindness also includes the provisions of 53A-25b-102 and 301.

K. "Educational Resource Center" (ERC) is a center under the direction of the USDB that provides information, technology, and instructional materials to assist Utah children with sensory impairments in progressing in the curriculum. It is also the mission of the ERC to facilitate access to materials, information, and training for teachers and parents of children with sensory impairments.

L. "Hearing impairment/deafness" ('hard of hearing' for purposes of this rule) is defined as follows:

(1) Hearing impairment is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

(2) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

M. "Local education agency" (LEA) means an agency that has administrative control and direction for public education. School districts, charter schools, and the USDB are LEAs.

N. "National Instructional Materials Access Center (NIMAC) is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue, and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

O. "National Instructional Materials Accessibility Standard" (NIMAS) means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

P. "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

Q. "Related services" means those supportive services that are necessary for the appropriate implementation of the IEP. These may include but are not limited to speech pathology,

audiology, low vision services, orientation and mobility, school counselor, transportation, school nurse, occupational therapy, or physical therapy.

R. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973 means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

S. "Technical assistance" means assistance to public education employees or licensed educators, and parents and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

T. "USDB" means the Utah Schools for the Deaf and the Blind.

U. "USOE" means the Utah State Office of Education.

V. "Utah State Instructional Materials Access Center (USIMAC) is a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

W. Visual impairment (including blindness) is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness that adversely affects a student's educational performance.

X. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

#### **R277-800-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-25B-201 which describes the authority of the Board regarding the USDB, Section 53A-25b-203 which directs the Board to appoint Advisory Council members and assign a USOE staff member as a liaison between the Board and the Advisory Council, Section 53A-25b-302 which directs the Board to establish entrance policies and procedures to be considered, consistent with IDEA, for student placement recommendations at the USDB, Section 53A-25b-501 to establish USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

#### **R277-800-3. Board Authority Over and Support for USDB.**

A. Consistent with Section 53A-25b-201, [F]the Board is the governing board of the USDB.

B. The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and its executive officer, the State Superintendent of Public Instruction.

C. The Board shall appoint the USDB superintendent on the basis of outstanding qualifications.

(1) The USDB superintendent's term of office is for two years and until a successor is appointed and qualified.

(2) The Board shall set the USDB superintendent's compensation for services.

(3) The USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board.

(4) The USDB superintendent qualifications shall be established by the Board.

(5) The duties of the USDB superintendent shall be established by the Board.

D. The Board shall direct the USOE to support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

E. The Board shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

F. The Board and USOE staff, as assigned, shall assist the USDB, ~~and~~ its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(1) The Board shall approve the annual budget and expenditures of USDB.

(2) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind. Qualifications of the associate superintendents shall be aligned with the requirements of Section 53A-25b-201.

(3) The USDB superintendent and associates may hire staff and teachers as needed for the USDB. ~~[Teachers]~~ Educators and related service providers shall be appropriately licensed and credentialed or both for their specific assignments ~~[and support staff properly trained and supervised for their assignment].~~

(4) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(5) The USDB superintendent and associates shall communicate regularly and effectively with the USOE and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting or as requested by the Board.

(6) The USDB report shall contain:

(a) a financial report;

(b) a report on the activities of the superintendent and associate superintendents;

(c) a report on activities to involve parents and constituency, including ~~[school district and charter school]~~ LEA personnel and advocacy groups, in the governance of the school and implementation of service delivery plans for students with sensory impairments; and

(d) a report on student achievement including student achievement data that provides longitudinal data for both current and previous students served by USDB, graduation rates, and students exiting USDB and their educational placements after exiting.

(7) USDB shall ensure that each child/student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(8) USDB shall provide the USOE with a listing of past and current children/students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

#### **R277-800-4. USDB Advisory Council.**

A. The Board shall establish the Advisory Council for USDB and appoint and support Advisory Council members as directed in Section 53A-25b-201. ~~[The purpose of the Advisory Council is to provide advice and recommendations to the Board and USDB administration regarding the instruction of students and the needs of children and students with sensory impairments served statewide by USDB.]~~

B. The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53A-25b-201.

C. ~~The Board shall appoint~~ Advisory Council members ~~[shall be appointed]~~ for two year terms and members may serve no more than three consecutive terms. Advisory Council members serve at the pleasure of the Board.

D. If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner by seeking nominations.

E. The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for nominating and recommending dismissal of Advisory Council members, and setting ethical standards for Advisory Council members.

(1) The bylaws shall include operating procedures for the Advisory Council; and

(2) the bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

F. Advisory Council membership and school community council membership:

(1) Members of the Advisory Council may serve as school community council members under Section 53A-1a-108(4) and R277-491.

(2) The USDB school community council and election process shall be consistent with Section 53A-1a-108 and R277-491.

(3) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students in voting and school community council meetings.

#### **R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.**

A. To be eligible to receive free services from the USDB, a student must be a resident of Utah and meet requirements of Section 53A-25b-301.

B. A student's ~~[placement at USDB, in a school/school district or charter school shall be determined by the student's]~~ IEP under IDEA or Section 504 accommodation plan shall determine a student's placement at the USDB, in a school district/school or charter school. USDB services for students who are school-age shall be limited to those on an IEP or Section 504 accommodation plan.

C. Consistent with Section 53A-25b-301(3)(c), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with IDEA using the Blind/Visually Impaired Guidelines, Deaf/Hard of Hearing Guidelines, or Deafblind Guidelines, as guidance. The USDB Guidelines are hereby incorporated by reference and included with this rule.

D. It is the responsibility of the student's district of residence or charter school to conduct Child Find under R277-800-1F, and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(1) ~~[A representative from the student's district of residence or charter school and a representative from the USDB shall be invited to the]~~A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB.

(2) The LEA shall consider the parental preference~~[shall be considered]~~ in the IEP or Section 504 accommodation plan process consistent with Section 53A-25b-301(3)(c). The final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education (FAPE) for the student and shall not be determined solely by parent preference.

E. When USDB is the designated LEA, USDB has full responsibility for all services defined in the IEP/Section 504 accommodation plan. A representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation team.

F. When the district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB may be designated by the team as a related service provider. The USDB remains a required member of the student's IEP or 504 accommodation plan team.

G. The IEP or Section 504 accommodation plan shall clearly define what services are to be provided by the related service provider(s).

H. The IEP or Section 504 team shall determine the designated LEA for student placement.

I. Parent complaints regarding student placement at district of residence or USDB:

(1) If a parent is dissatisfied with a student's placement at USDB or district of residence or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, ~~[August 2007]~~November 2013.

(2) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and district of residence, or for the USDB and district of residence to share responsibility for serving a student, the parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, ~~[August 2007]~~November 2013.

**R277-800-6. LEA and Board Interagency Agreement.**

A. The Board, USOE, and LEAs, with assistance from the USDB, shall develop an Interagency Agreement that further explains roles, services, and financial obligations to students and participating entities and a basic process for resolving disagreements among the parties to the Agreement.

B. The Board shall also designate a USOE arbitrator or a panel of arbitrators to resolve disagreements among the USOE, the USDB, and LEAs regarding services to blind, visually impaired, deaf, hard of hearing, and deafblind students in order to provide

services. The Board may make this appointment when a disagreement arises.

C. The Interagency Agreement shall detail eligibility for USDB services, cost, if any, for the provision of USDB services and accessible materials.

**[R277-800-7. USDB Programs and Services-Student Eligibility.**

A. The USDB shall provide services and resources only for students who are deaf, blind or deafblind:

(1) A student with multiple disabilities whose disabilities include blindness, deafness or deafblindness may receive USDB services consistent with the student's IEP.

(2) Non-disabled preschool-age children may participate in USDB funded preschool programs consistent with the requirements of IDEA that students with disabilities must be served in the least restrictive environment and that groups or classes of students with disabilities must include non-disabled peers. Non-disabled children participating in these programs shall pay fees or tuition or both in order to participate.

B. When the USDB is the designated LEA, the USDB shall provide all appropriate services to the student consistent with the student's IEP or Section 504 accommodation plan. Services may include:

(1) USDB instructional supports:

(a) assessments for eligibility, placement, and educational programming and evaluation;

(b) Utah Augmentative Communication Team (UAAACT) assessments to determine assistive technology needs;

(c) augmentative communication devices;

(d) assistive technology as needed;

(e) educational technology as needed;

(f) access to ERC;

(g) extended school year as determined by the IEP team;

(2) USDB related services to support student needs:

(a) audiology services as needed;

(b) behavior intervention;

(c) low vision services;

(d) nursing;

(e) occupational therapy;

(f) orientation and mobility;

(g) psychology;

(h) physical therapy;

(i) speech and language therapy;

(j) social work as needed;

(k) transportation, consistent with the USDB transportation policy.

(3) Services for students who are deaf/hard of hearing:

(a) American Sign Language/English bilingual instruction;

(b) auditory/oral instruction;

(c) auditory therapy;

(d) cued speech transliteration;

(e) American Sign Language interpretation;

(f) oral transliteration.

(4) Services for students who are blind/visually impaired:

(a) Braille instruction;

(b) instruction in the expanded core curriculum;

(c) environmental awareness;

- ~~\_\_\_\_\_ (d) orientation and mobility support.~~
- ~~\_\_\_\_\_ (5) Services for students who are deafblind:~~
  - ~~\_\_\_\_\_ (a) deafblind consultant;~~
  - ~~\_\_\_\_\_ (b) communication intervener.~~
- ~~\_\_\_\_\_ C. When the USDB is determined by the IEP or Section 504 accommodation plan team to act as the outreach program provider, the USDB shall provide technical assistance, consultation, and professional development on issues related to sensory disabilities available to LEAs from the USDB at no charge. Services consistent with the student's IEP or Section 504 accommodation plan may include:~~
  - ~~\_\_\_\_\_ (1) assessments for eligibility, placement, and educational programming and evaluation;~~
  - ~~\_\_\_\_\_ (2) assistive and educational technology;~~
  - ~~\_\_\_\_\_ (3) technology demonstration labs;~~
  - ~~\_\_\_\_\_ (4) transition planning;~~
  - ~~\_\_\_\_\_ (5) audiology services as needed;~~
  - ~~\_\_\_\_\_ (6) instructional strategies;~~
  - ~~\_\_\_\_\_ (7) instructional materials;~~
  - ~~\_\_\_\_\_ (8) Braille or large print or both;~~
  - ~~\_\_\_\_\_ (9) communication methodologies;~~
  - ~~\_\_\_\_\_ (10) accommodations as necessary for educational gain;~~
  - ~~\_\_\_\_\_ (11) modifications as necessary for educational gain;~~
  - ~~\_\_\_\_\_ (12) educational interventions;~~
  - ~~\_\_\_\_\_ (13) low vision services;~~
  - ~~\_\_\_\_\_ (14) occupational therapy;~~
  - ~~\_\_\_\_\_ (15) physical therapy;~~
  - ~~\_\_\_\_\_ (16) psychology;~~
  - ~~\_\_\_\_\_ (17) speech/language pathology;~~
  - ~~\_\_\_\_\_ (18) vision and hearing screening;~~
  - ~~\_\_\_\_\_ (19) interpreter training.~~
- ~~\_\_\_\_\_ D. The following services shall be provided by the USDB to the LEA of a student with sensory disabilities at no cost to the LEA:~~
  - ~~\_\_\_\_\_ (1) deafblind services (as determined through the IEP);~~
  - ~~\_\_\_\_\_ (a) consultation with the student's teacher, parent and the student;~~
  - ~~\_\_\_\_\_ (b) communication intervener.~~
  - ~~\_\_\_\_\_ (2) orientation and mobility;~~
  - ~~\_\_\_\_\_ (3) diagnostic services:~~
    - ~~\_\_\_\_\_ (a) Utah Augmentative Communication Team (UAAACT) assessments to determine assistive technology needs;~~
    - ~~\_\_\_\_\_ (b) deafblind state assessment and coaching team.~~
- ~~\_\_\_\_\_ E. The following designated services shall be available from USDB at no charge for LEAs with less than three percent of the total Utah student population:~~
  - ~~\_\_\_\_\_ (1) outreach teacher:~~
    - ~~\_\_\_\_\_ (a) sensory-specific services to students:~~
      - ~~\_\_\_\_\_ (i) instruction;~~
      - ~~\_\_\_\_\_ (ii) assessments for eligibility, placement, and educational programming and evaluation;~~
      - ~~\_\_\_\_\_ (iii) monitoring of student progress.~~
    - ~~\_\_\_\_\_ (b) supports to classroom teacher:~~
      - ~~\_\_\_\_\_ (i) consultation;~~
      - ~~\_\_\_\_\_ (ii) technical assistance.~~
  - ~~\_\_\_\_\_ (2) Related services to support the student:~~
    - ~~\_\_\_\_\_ (a) audiology;~~
    - ~~\_\_\_\_\_ (b) low vision services.~~

~~\_\_\_\_\_ (3) The USOE shall designate annually the LEAs that meet the three percent eligibility standards for specific identified services.~~

~~\_\_\_\_\_ F. LEAs may contract with USDB to provide the following services, if qualified personnel are available:~~

- ~~\_\_\_\_\_ (1) outreach teacher;~~
- ~~\_\_\_\_\_ (2) related services;~~
- ~~\_\_\_\_\_ (3) ASL interpretation;~~
- ~~\_\_\_\_\_ (4) assessment;~~
- ~~\_\_\_\_\_ (5) assistive and educational technology instruction.~~

~~\_\_\_\_\_ G. The following materials are available to LEAs on loan from the USDB. The duration of the loan and immediate availability of resources may vary:~~

- ~~\_\_\_\_\_ (1) ERC:~~
  - ~~\_\_\_\_\_ (a) textbooks (Braille, large print);~~
  - ~~\_\_\_\_\_ (b) teaching aids;~~
  - ~~\_\_\_\_\_ (c) library materials;~~
  - ~~\_\_\_\_\_ (d) professional library;~~
  - ~~\_\_\_\_\_ (e) described and captioned media.~~
- ~~\_\_\_\_\_ (2) technology loan programs (limited to 30 days):~~
  - ~~\_\_\_\_\_ (a) assistive and adaptive technology loan program;~~
  - ~~\_\_\_\_\_ (b) related services technology loan program.~~
- ~~\_\_\_\_\_ (3) The USDB shall develop a policy and process for publishing annually a list of materials available for loan, LEAs to whom materials may be loaned, and loan periods:~~
  - ~~\_\_\_\_\_ (a) The policy shall emphasize communication among LEAs and the USDB about availability of resources. Resources shall be determined by a student's IEP or Section 504 accommodation plan; the origin of the resources may be determined between an LEA and the USDB.~~
  - ~~\_\_\_\_\_ (b) The USDB shall develop a protocol for use in reviewing and ordering materials not immediately available when requested, as part of a student's education program.~~
  - ~~\_\_\_\_\_ (c) Students/parents/guardians are on notice that materials are loaned for the use of the student for a designated period for educational purposes. If loaned materials are lost, stolen, or damaged intentionally or due to student negligence, the student/parent/guardian shall be responsible to reimburse the LEA or USDB for the costs of the materials.~~

~~**R277-800-8. Payment by LEAs for USDB Services Beyond USDB Obligation.**~~

~~\_\_\_\_\_ A. Certain services provided by USDB personnel, employees or contract employees are identified in R277-800-7 and shall be provided to LEAs at no cost consistent with the student's IEP or Section 504 accommodation plan.~~

~~\_\_\_\_\_ B. Other services and resources may be available to LEAs from the USDB for a reasonable charge or fee paid by the LEA, to the extent of resources or personnel available. These services include:~~

- ~~\_\_\_\_\_ (1) outreach teachers;~~
- ~~\_\_\_\_\_ (2) related services;~~
- ~~\_\_\_\_\_ (3) American Sign Language;~~
- ~~\_\_\_\_\_ (4) student assessment; and~~
- ~~\_\_\_\_\_ (5) assistive and educational technology instruction.~~

~~\_\_\_\_\_ C. The USOE, USDB and LEAs shall determine appropriate fees, consistent statewide, for services subject to review by the Board, and notice to LEAs and parents of children currently~~

receiving services from the USDB. The USDB shall review and publish its fee schedule for services to LEAs annually.

**R277-800-[9]7. Assessment of USDB Students with Visual and Hearing Impairments Served in LEAs of Residence.**

A. ~~[Students shall be assessed]~~ Appropriate specialists shall assess students consistent with Section 53A-1-601 et seq., R277-402, R277-700, R277-705, IDEA, Section 504 of the Rehabilitations Act, and Section 53A-25B-304.

B. The USDB shall establish an assessment policy and guidelines to implement required assessments and address:

(1) appropriate, complete and timely evaluations of students;

(2) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(3) complete and accurate required assessments available to eligible students consistent with state and ~~[school district]~~ LEA assessment timelines and availability of materials for non-disabled students;

(4) staff ~~[training]~~ professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(5) procedures to ensure appropriate interpretation of assessments and results for parents and use of assessment results by USDB personnel.

**R277-800-[10]8. Outreach Programs.**

A. The USDB and ~~[school districts or charter schools]~~ LEAs may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in public school classrooms in locations other than the USDB campus.

B. ~~[School districts or charter schools]~~ LEAs shall provide:

(1) classroom(s);

(2) basic instructional materials;

(3) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the ~~[school district or charter school]~~ LEA;

(4) administrative support;

(5) basic secretarial services;

(6) special education related services.

C. The USDB shall provide:

(1) classroom instructors, including aides;

(2) instructional materials specific to the disability of the students.

D. LEAs may reassign ~~[F]~~ the responsibilities of the USDB and a school district or charter school ~~[may be reassigned]~~ as negotiated between the ~~[school district or charter school]~~ LEAs and the USDB.

E. An ~~[school district or charter school]~~ LEA shall claim the state WPU if the ~~[school district or charter school]~~ LEA provides all items or services identified in R277-800-[10]8B.

**R277-800-[11]9. USDB Fiscal Procedures.**

A. The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

B. The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Section 53A-25b-105.

C. The USDB is a public state entity under the direction of the Board and as such is subject to state laws ~~[identified in]~~ and exemptions consistent with Section 53A-25b-105 ~~[including State Money Management Act, Open and Public Meetings Act, Risk Management, State Building Board and Division of Facilities Construction and Management, Information Technology Services, Archives and Records Services, Utah Procurement Code, Budgetary Procedures Act, and Utah State Personnel Management Act].~~

D. The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs. The five percent carryover prohibition does not apply to funds received under Section 53A-16-101.5 and Section 12 of the Utah Enabling Act.

E. The USOE shall recover ~~[F]~~ federal reimbursement funds (IDEA and Medicaid) ~~[shall be recovered]~~ quarterly during the year. The USOE shall identify ~~[R]~~ reimbursement amounts ~~[shall be identified]~~ in the current year's or no later than the subsequent year's budget.

F. The USDB shall use the revenue from the federal land grant designated for the maintenance of the School for the Blind and for the School for the Deaf ~~[shall be used]~~ solely for the benefit of ~~[USDB]~~ deaf and blind students ~~[and it]~~. The recommended or designated use of the fund is subject to review by the Board.

**R277-800-[12]10. Utah State Instructional Materials Access Center (USIMAC).**

A. The Board authorizes the establishment of the USIMAC to produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.

B. The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.

C. The USOE shall oversee the operations of the USIMAC.

D. The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature and the USOE.

E. LEAs may purchase accessible instructional materials using their own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established opt in procedures to ensure timely access for students with print disabilities.

F. For LEA textbook requests submitted by April 1 of the preceding school year, the USIMAC shall provide the textbook in

the requested alternate format by the beginning of the following school year.

G. The USDB ERC shall serve as the repository and distribution center for the USIMAC.

H. Operation of the USIMAC

(1) Qualifying students: A student qualifies for accessible instructional materials from the USIMAC (Braille, audio, large print, digital formats) following LEA determination that the student has a print disability in accordance with the Chafee Amendment, IDEA, or Section 504 of the Rehabilitation Act.

(2) Costs for developing core instructional materials:

(a) ~~An LEA shall request [F]textbooks for blind, vision impaired or deafblind students served by the USDB or LEAs [shall be requested by the LEA]~~ consistent with the student's IEP or Section 504 accommodation plan.

(b) When an LEA requests a core instructional textbook that was published before August 2006, the USIMAC shall conduct a search for the textbook within existing resources; ~~[and,] if available, the USIMAC shall send~~ the textbook ~~[shall be sent]~~ to the ERC for distribution to the LEA.

(i) If the textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(ii) If the textbook is available through the American Printing House for the Blind (APH), the USDB shall order the textbook [shall be ordered] using state acquired federal funds designated specifically for USIMAC materials and sent to the ERC for distribution to the LEA.

(iii) If the textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(iv) If the textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC. [t]The USIMAC [will]shall then produce the textbook and send it to the ERC for distribution.

~~[ (A) The USIMAC shall purchase the LEA requested textbook in accordance with copyright law. The cost of the student edition textbook shall be charged to the requesting LEA.~~

~~[ (B)y~~ The USIMAC shall produce the textbook in the LEA requested alternate format in accordance with the cost sharing outlined in the Interagency Agreement described in R277-800-6.

(c) The sharing of costs for purchases described in R277-800-12 shall be outlined in the Interagency Agreement described in R277-800-6.

(d) For textbooks published ~~[since]after~~ August 2006, the USIMAC shall follow the same procedures outlined in R277-800-12H(2)(b). If the USIMAC is unable to obtain the NIMAS file set in a timely manner as a result of publisher negligence, the Board shall authorize the USIMAC to seek damages from publisher(s) as a result of the failure to meet contract provisions.

(3) Textbook publishers required to meet NIMAS requirements:

(a) All approved textbook contracts for the state of Utah for instructional materials published ~~[since]after~~ August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to provide the NIMAS

file set to the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines, the USIMAC shall bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set.

(c) ~~[The p]~~ Publishers shall be advised of the rule; the Utah Instructional Materials Commission under R277-469 shall not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(d) LEAs shall [R]request[s for] and access audio books ~~[shall be accessed]~~ through the USIMAC, as appropriate, or through other sources. Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

**KEY: educational administration**

**Date of Enactment or Last Substantive Amendment:** ~~[July 9, 2012]~~ **2014**

**Notice of Continuation:** June 10, 2014

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-25b-203; 53A-25b-302; 53A-25b-501; 53A-1-401(3)

## Environmental Quality, Air Quality R307-110-10 Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38841

FILED: 09/08/2014

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Air Quality Board has proposed to repeal and replace three State Implementation Plans: SIP Subsections IX.A.21: Control Measures for Area and Point Sources, Fine Particulate Matter, PM<sub>2.5</sub> SIP for the Salt Lake City, UT, Nonattainment Area; IX.A.22: Control Measures for Area and Point Sources, Fine Particulate Matter, PM<sub>2.5</sub> SIP for the Provo, UT Nonattainment Area; and IX.A.23: Control Measures for Area and Point Sources, Fine Particulate Matter, PM<sub>2.5</sub> SIP for the Logan, UT-ID, Nonattainment Area. The new Section IX, Part A of the SIP needs to be incorporated into the Utah Air Quality rules. Section R307-110-10 is the rule that currently does this. The proposed SIP subsections, along with their corresponding Technical Support Documents, and Section R307-110-10 will have simultaneous public comment periods beginning 10/01/2014. Amendments to SIP Sections IX.A.21, 22, and 23 are necessary because on 01/04/2013, the D.C. Circuit Court of Appeals found that EPA had incorrectly interpreted the Clean Air Act when determining how to implement the National Ambient Air

Quality Standards (NAAQS) for PM2.5. The court ruled that EPA should have implemented the PM2.5 NAAQS based on both Subpart 1 and Subpart 4 of Part D of the Clean Air Act. Previously, EPA had only implemented the NAAQS based on Subpart 1, and therefore Utah's PM2.5 SIPs were prepared to meet only those requirements. The new amendments to IX.A.21, 22, and 23 are to bring these SIP sections into compliance with both Subpart 1 and 4.

**SUMMARY OF THE RULE OR CHANGE:** The amendment changes the date of Section IX, Part A of the SIP most recently adopted by the Air Quality Board that is incorporated into the Utah Air Quality Rules. PM2.5 State Implementation Plans (SIPs) found in IX.A.21, 22, and 23 are being amended to meet the requirements of both Subpart 1 and 4 of Part D of the Clean Air Act. Fundamentally these three SIPs are no different than what the Board adopted in 2013. However, they have all been revised to meet the planning requirements of Subpart 4 and Subpart 1. The previous SIPs for the Provo and Salt Lake City nonattainment areas (IX.A.21 and IX.A.22) demonstrated that both nonattainment areas could reach attainment of the 24-hour PM2.5 NAAQS, but not until 2019. Under Subpart 4, the attainment date is 12/31/2015. As a result, the revised SIPs for both Provo and Salt Lake City quantitatively demonstrate that it is impracticable to attain the standard by 12/31/2015. The previous PM2.5 SIP for the Logan UT-ID nonattainment area (IX.A.23), however, demonstrated that the area can meet the 24-hour PM2.5 NAAQS by 2014. The revised SIP demonstrates that the area can attain the standard by the new attainment date of 12/31/2015. All these SIPs and Technical Support Documents are available for public review online at <http://www.airquality.utah.gov/Public-Interest/Public-Comments-Hearings/Pubrule.htm>. The public comment period for the SIPs will run from 10/01/2014 to 10/31/2014.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(3)(e)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Utah State Implementation Plan Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, published by State of Utah Division of Air Quality, 12/03/2014

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** With IX.A.21, 22, and 23, the changes are simply to meet the planning requirements of Subpart 4, and the SIPs are fundamentally the same; therefore, there are no anticipated costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** With IX.A.21, 22, and 23, the changes are simply to meet the planning requirements of Subpart 4, and the SIPs are fundamentally the same; therefore, there are no anticipated costs or savings to the local government.
- ◆ **SMALL BUSINESSES:** With IX.A.21, 22, and 23, the changes are simply to meet the planning requirements of

Subpart 4, and the SIPs are fundamentally the same; therefore, there are no anticipated costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** With IX.A.21, 22, and 23, the changes are simply to meet the planning requirements of Subpart 4, and the SIPs are fundamentally the same.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to the SIPs being incorporated into this rule are to meet the planning requirements of Subpart 4. These changes should not result in any additional compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** With IX.A.21, 22, and 23, the changes are simply to meet the planning requirements of Subpart 4, and the SIPs are fundamentally the same and do not include any new requirements for businesses.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at [mberger@utah.gov](mailto:mberger@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

◆ 10/20/2014 10:00 AM, DEQ, 195 N 1950 W, Room 1015, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 12/04/2014**

**AUTHORIZED BY:** Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-110. General Requirements: State Implementation Plan.**

**R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December [4, 2013]3, 2014, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY:** air pollution, PM10, PM2.5, ozone

**Date of Enactment or Last Substantive Amendment:** [~~January 9~~December 4, 2014

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

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(3)(e)

## Environmental Quality, Air Quality R307-110-10

### Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38850

FILED: 09/09/2014

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Air Quality Board has proposed for public comment amendments to State Implementation Plan (SIP) Subsection IX.A, Particulate Matter. The new Section IX, Part A of the SIP needs to be incorporated into the Utah Air Quality rules. Section R307-110-10 currently does this. The proposed amendments to the SIP and Section R307-110-10 will have simultaneous public comment periods beginning 10/01/2014. The amendment to Section IX.A is necessary because EPA has revised the model used to estimate emissions from mobile sources. Motor Vehicle Emissions Simulator (MOVES) is the new tool states will use as the basis for their SIPs. Because MOVES is fundamentally different in its estimate techniques from the former model, a motor vehicle emissions inventory and budget based on the new MOVES model for Utah County is necessary.

**SUMMARY OF THE RULE OR CHANGE:** The amendment changes the date of Section IX, Part A of the SIP most recently adopted by the Air Quality Board that is incorporated into the Utah Air Quality Rules. Section IX.A is amended by revising the Utah County motor vehicle emissions inventory and budget using the new MOVES tool, which is the new model developed by EPA to estimate emissions from mobile sources. The public comment period for the SIP and its accompanying Technical Support Document will run from 10/01/2014 to 10/31/2014. These documents can be viewed online at <http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Pubrule.htm>.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 10-2-104(3)(e)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources,

Part A, Fine Particulate Matter, published by State of Utah Division of Air Quality, 12/03/2014

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The changes made to SIP Section IX.A do not change any state requirements; therefore, there are no anticipated costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The changes made to SIP Section IX.A do not change any local government requirements; therefore, there are no anticipated costs or savings.
- ◆ **SMALL BUSINESSES:** The changes made to SIP Section IX.A do not change any small business requirements; therefore, there are no anticipated costs or savings.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes made to SIP Section IX.A do not change any requirements to persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings by incorporating these new SIPs into the rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to the SIP is to add a new and updated motor vehicle emissions budget. These changes should not result in any additional compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes made do not change any requirements for businesses; therefore, there are no anticipated costs or savings by incorporating these new SIPs into the rule.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at [mberger@utah.gov](mailto:mberger@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

- ◆ 10/20/2014 10:00 AM, DEQ, 195 N 1950 W, Room 1015, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON:** 12/04/2014

**AUTHORIZED BY:** Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-110. General Requirements: State Implementation Plan.**  
**R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December [4, 2013]3, 2014, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY:** air pollution, PM10, PM2.5, ozone  
**Date of Enactment or Last Substantive Amendment:** [~~January 9~~December 4, 2014  
**Notice of Continuation:** February 1, 2012  
**Authorizing, and Implemented or Interpreted Law:** 19-2-104(3)(e)

Environmental Quality, Air Quality  
**R307-110-17**  
 Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 38840  
 FILED: 09/08/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 01/08/2014, the Utah Air Quality Board adopted SIP Subsections IX.H.11, 12, and 13, Control Measures for Area and Point Sources, Emission Limits and Operating Practices, PM2.5 Requirements. These subsections of Part H meet the PM2.5 plan requirements for specific stationary sources located in the Salt Lake City, UT, and Provo, UT, PM2.5 nonattainment areas. That plan revision was subsequently submitted to EPA. As these SIPs were nearing completion, the D.C. Circuit Court of Appeals found that EPA had incorrectly interpreted the Clean Air Act when determining how to implement the National Ambient Air Quality Standard (NAAQS) for PM2.5. The 01/04/2013, court ruling held that the EPA should have implemented the NAAQS based on both Clean Air Act Subpart 1 and Subpart 4 of Part D, Title 1. EPA had incorrectly required states to develop their SIPs based on only Subpart 1. The amendments proposed to Part H. 11, 12, and 13 are to address the additional requirements of Subpart 4. Additional proposed amendments to the SIP are proposed in response to comments made by EPA concerning the 01/08/2013 plan.

**SUMMARY OF THE RULE OR CHANGE:** The rule incorporates the changes made to SIP Section IX.H.11, 12,

and 13. Fundamentally the revised Part H is no different than the plan that was adopted on January 8, 2014. The RACM/RACT requirement differs only in the timing of its implementation. The attainment date has advanced under Subpart 4 from 2019 to 2015. In response to EPA's comments, refineries are no longer exempt from emission limits during startup and shutdown operations, and the plan has been revised to take into account the most expeditious date by which sources can install the required controls. Additionally, new language was added in Part H.11.g.vii so as to not prevent refineries from producing gasoline that meets the sulfur specifications of Tier 3 of the federal motor vehicle control program.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(3)(e)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact the state budget.
- ◆ **LOCAL GOVERNMENTS:** Because neither the rule nor the SIP the rule incorporates establish any new control requirements for local government, there are no anticipated costs or savings.
- ◆ **SMALL BUSINESSES:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impacted small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impacted persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are a few changes to emission control units required in the SIP; however, any costs associated with them should be negligible. Additionally, while the compliance date for sources to install required controls has changed, the cost to install those controls has not.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are a few changes to emission control units required in the SIP; however, any costs associated with them should be negligible. Additionally, while the compliance date for sources to install required controls has changed, the cost to install those controls has not.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 10/20/2014 10:00 AM, DEQ, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/04/2014

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.****R307-110. General Requirements: State Implementation Plan.****R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on [~~January 8~~]December 3, 2014, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY:** air pollution, PM10, PM2.5, ozone

**Date of Enactment or Last Substantive Amendment:** [~~January 9~~]December 4, 2014

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

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(3)(e)

**Environmental Quality, Air Quality****R307-121****General Requirements: Clean Air and Efficient Vehicle Tax Credit****NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38837

FILED: 09/04/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** During the 2014 General Legislative Session, the Utah Legislature revised the statute governing the state's Clean Fuel Tax Credit through H.B. 74. The bill modified the eligibility requirements to claim the tax credit. The proposed changes to Rule R307-121 are to align the rule with the new requirements as promulgated through H.B. 74 (2014).

**SUMMARY OF THE RULE OR CHANGE:** Because "qualifying plug-in hybrids" are now eligible for the tax credit, while traditional hybrids are no longer eligible, references to traditional hybrid vehicles are being removed and a definition for "qualifying plug-in hybrid" is being added. The requirements for qualifying vehicles that are purchased under Section R307-121-3 are being consolidated in the rule. Requirements for qualifying vehicles that are leased under Section R307-121-4 are being added.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-402 and Section 19-2-104 and Section 59-10-1009 and Section 59-7-605

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The legislature considered cost when it approved "qualifying plug-in hybrids" to be eligible for the credit and when it no longer allowed traditional hybrids to qualify for the credit. It is possible that the amendments to this rule could result in additional costs or savings to the state as it changes what vehicles are eligible for the credit; however, those costs or savings are difficult to determine as there is little data on vehicle availability and consumer demand.

♦ **LOCAL GOVERNMENTS:** No costs or savings are anticipated for local government budgets because local governments do not pay taxes.

♦ **SMALL BUSINESSES:** Because this amendment changes which vehicles are eligible for the tax credit, small businesses that take advantage of the tax credit could either see increased costs or savings depending on what types of vehicles they include in their fleet. The Division is unable to determine the exact costs or savings as there is little data on vehicle availability and consumer demand.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment changes which vehicles are eligible for the tax credit, persons other than small businesses, businesses, or local government entities that take advantage of the tax credit could either see increased costs or savings depending on what types of vehicles they purchase. The Division is unable to determine the exact costs or savings as there is little data on vehicle availability and consumer demand.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs are anticipated for individuals applying for the tax credit, as the cost to apply for the credit is nominal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is a potential that businesses could see some savings if they purchase qualifying vehicles and apply for and receive the credit. However, it is difficult to determine the exact amount of these savings due to data limitations.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2015

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.**

**R307-121-1. Authorization and Purpose.**

(1) This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit.

(2) R307-121 establishes procedures to provide proof of purchase or lease, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), to the director for an OEM vehicle or the conversion of a motor vehicle or special mobile equipment for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

**R307-121-2. Definitions.**

The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package that may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(g) and 59-10-1009(1)(g).

"Qualifying electric [or hybrid] vehicle" means qualifying electric [or hybrid] vehicle as defined in 59-7-605(1)(h) or 59-10-1009(1)(h).

"Qualifying plug-in hybrid vehicle" means qualifying plug-in hybrid vehicle as defined in 59-7-605(1)(i) or 59-10-1009(1)(i).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective January 3, 2012.

**R307-121-3. Proof of Purchase to Demonstrate Eligibility for New OEM Natural Gas, Propane, Qualifying Electric or Qualifying Plug-in Hybrid Vehicles.**

To demonstrate that an OEM natural gas, propane, qualifying electric, or qualifying plug-in hybrid motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle, or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the [vehicle identification number-(VIN)], the technician's ASE or CSA America certification number, and states that the motor vehicle is an [eligible]-OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle;[and]

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit[-];

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase; and

(5) the underhood identification number or engine group of the motor vehicle.

**R307-121-4. Proof of [Purchase]Lease to Demonstrate Eligibility for [Qualifying]New OEM Natural Gas, Propane, Qualifying Electric or Qualifying Plug-in Hybrid Vehicles.**

To demonstrate that an [motor vehicle is a qualifying]OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle is eligible for the tax credit, proof of [purchase]lease shall be made[-] in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

~~\_\_\_\_\_ (1) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase;~~

~~\_\_\_\_\_ (2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the qualifying electric or hybrid vehicle, the VIN, purchase date, and price of the motor vehicle;~~

~~\_\_\_\_\_ (3) the underhood identification number or engine group of the motor vehicle; and~~

~~\_\_\_\_\_ (4) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.~~

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent

manufacturer's documentation showing that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle; or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle;

(2) an original or copy of the lease agreement that includes the name of the taxpayer seeking the credit, the name of the lessor of the vehicle, the VIN, the beginning date of the lease, the value of the vehicle at the beginning of the lease, and the value of the vehicle at the end of the lease;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit;

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase; and

(5) the underhood identification number or engine group of the motor vehicle.

**R307-121-5. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to a Clean Fuel.**

To demonstrate that a conversion of a motor vehicle to be fueled by a clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documentation to the director:

(1) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit; the name, address, and phone number of the person that converted the motor vehicle to run on a clean fuel; the VIN; the date of conversion; and the price of the conversion equipment installed on the motor vehicle; and

(2) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit.

**R307-121-6. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.**

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documentation to the director:

(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed; and

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the serial number, the date of conversion, and the price of the conversion equipment installed on the special mobile equipment.

**KEY: air pollution, alternative fuels, tax credits, motor vehicles**  
**Date of Enactment or Last Substantive Amendment: January 1, 2014**

**Notice of Continuation: January 23, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-605; 59-10-1009**

Environmental Quality, Air Quality  
**R307-125**  
 Clean Air Retrofit, Replacement, and  
 Off-Road Technology Program

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 38838

FILED: 09/04/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Legislature enacted the Clean Air Retrofit, Replacement, and Off-Road Technology (CARROT) Program during the 2014 General Legislative Session through H.B. 61. CARROT allows grants or other programs such as exchange, rebate, or low-cost purchase programs for activities that reduce emissions from non-road or heavy-duty diesel, on-road engines. H.B. 61 gives authority to the Air Quality Board to make rules specifying the requirements and procedures of the CARROT Program, which this new rule does.

**SUMMARY OF THE RULE OR CHANGE:** This rule specifies the requirements and procedures of the Clean Air Retrofit, Replacement and Off-Road Technology Program that is authorized in Section 19-2-203, including how the director may allocate funds and how grants and exchange, rebate, or low-cost purchase awards are applied for and awarded.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-203 and Section 19-2-203

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** Because this rule is implementing a new grant program that has already been funded by the legislature, there are no new anticipated costs or savings to the state budget. Any administrative costs associated with implementing the program should be minimal and should not require any additional funding.

♦ **LOCAL GOVERNMENTS:** While there are no requirements in the rule for local government to participate in administering the program, it is likely that local health departments will be involved in carrying out various programs such as exchange, rebate, or low-cost purchase programs for landscape equipment. These costs should be minimal and would likely not result in an increase to their budgets. If local governments choose to apply for funding through this program, they could see savings not to exceed \$200,000, which is the amount funded by the Legislature.

♦ **SMALL BUSINESSES:** If small businesses choose to apply for funding through this program, they could see savings not to exceed \$200,000, which is the amount funded by the Legislature.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: If persons other than small businesses, businesses, or local government entities choose to apply for funding through this program, they could see savings not to exceed \$200,000, which is the amount funded by the Legislature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule establishes criteria for a voluntary program, there are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If businesses choose to apply for funding through this program, they could see savings not to exceed \$200,000, which is the amount funded by the Legislature.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 12/04/2014

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-125. Clean Air Retrofit, Replacement, and Off-Road Technology Program.**

**R307-125-1. Authority and Purpose.**  
 (1) This rule specifies the requirements and procedures of the Clean Air Retrofit, Replacement and Off-Road Technology Program that is authorized in 19-2-203.  
 (2) The procedures of this rule constitute the minimum requirements for the application for and the awarding of funds that are designated for the Clean Air Retrofit, Replacement, and Off-Road Technology Program.

**R307-125-2. Definitions.**  
 The terms "certified," "cost," "director," "division," "eligible equipment," "eligible vehicle," and "verified" are defined in 19-2-202.

**R307-125-3. Allocation of Funds.**  
 The director may apportion up to 50% of the funds allocated for this program for an exchange, rebate, or low-cost

purchase program under 19-2-203(2). The remainder may be allocated to a grant program under 19-2-203(1).

**R307-125-4. Grants Under 19-2-203(1).**  
(1) A grant under 19-2-203(1) may only be used for:  
(a) verified technologies for eligible vehicles or equipment; and  
(b) certified vehicles, engines, or equipment.  
(2) In prioritizing grant awards, the director shall consider:  
(a) whether and to what extent the applicant has already secured some other source of funding;  
(b) the air quality benefits to the state and local community attributable to the project;  
(c) the cost-effectiveness of the proposed project;  
(d) the feasibility and practicality of the project; and  
(e) other factors that the director determines should apply based on the nature of the application.  
(3) In prioritizing grant awards, the director may also, at the request of an applicant, consider the financial need of the applicant.

(4) A successful grant applicant will be required to agree:  
(a) to provide information to the division about the vehicles, equipment, or technology acquired with the grant proceeds;  
(b) to allow inspections by the division to ensure compliance with the terms of the grant;  
(c) to permanently disable replaced vehicles, engines, and equipment from use; and  
(d) for any grant that is not given on a reimbursement basis, to commit to complete the project as proposed;

(e) not to change the location or use of the vehicle, engine or equipment from the location or use proposed in their application without approval of the director; and  
(f) to any additional terms as determined by the director.  
(5) Eligible vehicles are defined in 19-2-202(7). No additional vehicles under 19-2-202(7)(e) are eligible at this time.  
(6) The division shall use the following procedures to implement the grant program:

(a) The division shall provide notice on the division's website of the availability of grants and of cut-off dates for applications.  
(b) An application for a grant shall be on a form provided by the division.  
(c) The director may provide grants on a reimbursement basis or as an advance award.  
(d) Successful grant applicants will be required to sign a grant agreement that contains the terms described in R307-125-4(4).  
(e) State agencies and employees are eligible to participate in the program and are subject to program requirements.

**R307-125-5. Exchange, Rebate, or Low-Cost Purchase Programs Under 19-2-203(2).**

(1) The director has discretion to choose whether to use an exchange, rebate or low-cost purchase program.  
(2) The division shall use the following procedures to implement an exchange, rebate or low-cost purchase program:  
(a) The division shall provide notice on the division's website of any exchange, rebate or low-cost purchase program.

(b) An application for an exchange, rebate, or low-cost purchase shall be on a form provided by the division.

(c) State agencies and employees are eligible to participate in any program and are subject to program requirements.

(d) The director may establish additional procedures appropriate to the specific program.

(3) A participant in an exchange, rebate, or low-cost purchase program will be required to agree to the terms outlined in the application as determined by the director.

**KEY: air quality, grants, rebates, purchase program**

**Date of Enactment or Last Substantive Amendment: 2014**

**Authorizing, and Implemented or Interpreted Law: 19-2-203; 19-1-203**

**Environmental Quality, Air Quality**  
**R307-302**  
**Solid Fuel Burning Devices in Box**  
**Elder, Cache, Davis, Salt Lake, Tooele,**  
**Utah, and Weber Counties**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38842

FILED: 09/08/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Under the direction of the Air Quality Board, the Division of Air Quality (DAQ) conducted a wood smoke workshop to gather suggestions from the community on ways to reduce wood smoke emissions. The suggestion that garnered the most support from the group was to prohibit solid fuel burning by industrial and commercial sources during mandatory no-burn periods. During the May 2014 Air Quality Board meeting, the Board discussed this option and directed DAQ staff to develop a rule that would accomplish this while exempting commercial and industrial food preparation sources.

**SUMMARY OF THE RULE OR CHANGE:** The rule is expanded to include all solid fuel burning sources, while exempting commercial and industrial food preparation sources, as well as exempting some commercial and industrial boilers and electrical generating units (EGUs). As proposed, the exemption to industrial boilers and EGUs would only apply to those sources that are existing as of the effective date of this rule amendment. DAQ is specifically requesting the public to submit their comments regarding this exemption as it will affect future biomass and waste-to-energy projects within the PM2.5 nonattainment area. The proposed amendment would also re-open the sole source registry until 06/01/2015. As proposed, there is no provision to permit the transfer of non-EPA Phase 2 certified stoves located within businesses and institutions as part of a real estate

transaction. (A similar provision is currently within the rule for residential properties.) DAQ is interested in the public's opinion on the possibility of including such a provision for businesses and institutions in this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-101 and Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no new requirements to the state; therefore, there are no anticipated costs or savings to the budget.

♦ **LOCAL GOVERNMENTS:** Because there are no new requirements to local government, there are no anticipated costs or savings.

♦ **SMALL BUSINESSES:** DAQ anticipates that there are some small businesses such as wood shops that burn solid fuel on mandatory no-burn days. However, during the wood smoke workgroup and subsequent stakeholder outreach efforts, no sources came forward to provide us information as to what restricting their wood-burning on mandatory no-burn days would cost. DAQ also anticipates that most small businesses that burn solid fuel on no-burn days do have alternative methods of heating their businesses, and that therefore costs would be minimal.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no new requirements for persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DAQ anticipates that there are some sources such as wood shops that burn solid fuel on mandatory no-burn days. However, during the wood smoke workgroup and subsequent stakeholder outreach efforts, no sources came forward to provide us information as to what restricting their wood-burning on mandatory no-burn days would cost. DAQ also anticipates that most sources that burn solid fuel on no-burn days do have alternative methods of heating their businesses, and that therefore costs would be minimal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** DAQ anticipates that there are some sources that burn solid fuel on mandatory no-burn days. However, during the wood smoke workgroup and subsequent stakeholder outreach efforts, no sources came forward to provide us information as to what restricting their wood-burning on mandatory no-burn days would cost. DAQ also anticipates that most sources that burn solid fuel on no-burn days do have alternative methods of heating their businesses, and that therefore costs would be minimal.

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

ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR

195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 12/04/2014

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-302. Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties.**

**R307-302-1. Purpose and Definitions.**

(1) R307-302 establishes emission standards for fireplaces and solid fuel burning devices used in residential, commercial, institutional and industrial facilities and associated outbuildings.

(2) The following additional definitions apply to R307-302:

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid fuel burning device" means any device used for burning wood, coal, or any other nongaseous and non-liquid fuel, both indoors and outdoors, but excluding outdoor wood boilers, which are regulated under R307-208.

**R307-302-2. Applicability.**

(1) R307-302-3 and R307-302-6 shall apply in PM10 and PM2.5 nonattainment and maintenance areas as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(4) R307-302 does not apply to restaurant and institutional food preparation.

(5) R307-302 does not apply to commercial and industrial boilers and electrical generating facilities existing prior to the effective date of this rule.

**R307-302-3. No-Burn Periods for Fine Particulate.**

(1) By ~~June 1, 2013~~ June 1, 2015, sole sources of residential heating using solid fuel burning devices must be registered with the director in order to be exempt during mandatory no-burn periods.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents, commercial, institutional and industrial facilities of the affected areas shall not use solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the director.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(2) will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties are forecasted to reach or exceed 25 micrograms per cubic meter, the director will issue a public announcement to provide broad notification that a mandatory no-burn period for solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those counties identified by the director. Residents, commercial, institutional and industrial facilities within the geographical boundaries described in R307-302-2(1) shall not use solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the director.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

**R307-302-4. No-Burn Periods for Carbon Monoxide.**

(1) Beginning on November 1 and through March 1, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices and fireplaces is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in R307-302-4(1), the director may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) A national weather service forecasted clearing index value of 250 or less;

(b) Forecasted wind speeds of three miles per hour or less;

(c) Passage of a vigorous cold front through the Wasatch Front; or

(d) Arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in R307-302-4(1) and (2), residents, commercial, institutional and industrial facilities ~~in~~ Provo City shall not use solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and are registered with the director or the local health district office.

**R307-302-5. Opacity for ~~Residential~~ Heating Appliances.**

Except during no-burn periods as required by R307-302-3 and 4, visible emissions from solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

- (1) An initial fifteen minute start-up period, and
- (2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

**R307-302-6. Prohibition.**

(1) Beginning September 1, 2013, no person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA Phase 2 certified or a fireplace that is not EPA qualified.

(2) Ownership of a non EPA Phase 2 certified stove within a residential dwelling installed prior to ~~the rule effective date~~ March 6, 2014 may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

**KEY:** air pollution, fireplaces, stoves, ~~residential~~ solid fuel burning

**Date of Enactment or Last Substantive Amendment:** ~~March 6, 2014~~ 2014

**Notice of Continuation:** June 2, 2010

**Authorizing, and Implemented or Interpreted Law:** 19-2-101; 19-2-104

**Governor, Economic Development**  
**R357-2**  
**Targeted Business Tax Credit**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 38860

FILED: 09/11/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule is written to outline the process and formula utilized for qualifying and allocating applicants' requests for the Targeted Business Tax Credit.

**SUMMARY OF THE RULE OR CHANGE:** This rule provides additional definitions including "new capital project," "project," and "substantial new employment". This rule also outlines the application procedure and how the targeted business tax credit is allocated to qualifying applicants.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63M-1-502

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This program is already being administered and does not create any new procedures or processes that would create a larger cost or savings to the state. Thus, there is no cost or savings to the state.

◆ **LOCAL GOVERNMENTS:** This program does not allow for local governments to be participants in the program. Thus, this rule will not affect local governments.

◆ **SMALL BUSINESSES:** This rule will affect small businesses by streamlining and providing clearer guidance on how they can participate and utilize this program to receive a tax credit. There will be no other anticipated affect to small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons will be affected beyond being able to better understand how to possibly participate in the program and how the allocation of tax credit is determined.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no fees or costs outside of nominal administrative cost to submit applications.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no fiscal impact on businesses because of this rule.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Michael Sullivan by phone at 801-538-8811, by FAX at 801-538-8888, or by Internet E-mail at mgsullivan@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2014**

**AUTHORIZED BY:** Val Hale, Executive Director

**R357. Governor, Economic Development.****R357-2. Targeted Business Tax Credit.****R357-2-1. Purpose.**

The purpose of this rule is to define what constitutes substantial new employment, new capital development, a project, and to establish a general formula for determining the allocated cap amount for each business applicant.

**R357-2-2. Authority.**

UCA 63M-1-502 requires the office make rules establishing the manner by which the allocation cap amount is determined and what constitutes substantial new employment, new capital development, and a project.

**R357-2-3. Definitions.**

(1) As used in this Rule:

(a) "Available Tax Credit" means the unencumbered amount of the annual \$300,000 tax credit provided for in 63M-1-504(2).

(b) "Executive Committee" means the Executive Committee of the Governor's Rural Partnership Board provided for in UCA 63C-10-102(5)

(c) "Full Time Equivalent Employee" means an individual full time employee of the business applicant's Utah Business that is a Utah Resident and employed at least 30 hours per week (excluding lunch) during each week.

(d) "New Capital Development" means any new

(i) facility with construction costs of \$100,000 or more, which includes additions to existing facilities and the enclosure of space that was not previously fully enclosed;

(ii) remodeling, site, or utility project with costs of \$100,000 or more; or

(iii) purchase of real property.

(e) "Project" means the plan as described in the application submitted to The Office of Rural Development by the business applicant including the projects objectives, projections, and scope.

(f) "Substantial New Employment" means new full time equivalent employees the Business Applicant will add in the following three tax year(s) as specified in the application and where substantial is measured and determined by the Executive Committee of the Governor's Rural Partnership Board in relation to:

(i) The economic impact on the community in which the project will occur, including:

(A) salary and wages of the new full time equivalent employees in comparison to the county average wage;

(B) whether or not health and other benefits will be provided to all the new full time equivalent employees in addition to the salary and wages;

(C) the business applicant's declared number of projected new full time equivalent employees in comparison to the overall county employment numbers provided by the Department of Work Force Services;

(D) the amount of new full time equivalent employees in comparison to the business applicant's current number of full time equivalent employees; and

(E) any other factors that the Executive Committee considers as substantial new employment.

(2) For all other relevant terms not defined in this rule, the definitions set forth in UCA 63M-1-501 shall apply.

**R357-2-4. Application Procedure.**

Applications will be reviewed in January and February of each calendar year, and all applications should be submitted by January 31. The Office of Rural Development may consider applications submitted between January 31 and June 1 of the calendar year if approved by a majority vote of the Executive Committee of the Governor's Rural Partnership Board. No applications will be considered between June 1 and December 31st of the calendar year.

**R357-2-5. Formula for Allocation Cap Amount for Each Business Applicant.**

(1) Each business applicant's application will be reviewed, scored, and ranked by the Executive Committee, as follows:

(a) A weighted score will be given to each application in the following subcategories:

(i) project;

(ii) projected new capital development; and

(iii) projected substantial new employment

(2) The scoring criteria will be provided to business applicants via the targeted business tax credit application.

(3) The Executive Committee shall award a targeted business income tax credits to the top ranking projects in descending order, based on the available tax credit and until the cap is reached as set forth in UCM 63M-1-504(2).

(4) Awards shall be given over a three year period.

(5) Awards may be allocated as follows:

(a) \$50,000 tax credit for one year of the award, and \$25,000 tax credit for two of the three years; or

(b) The Executive Committee may elect to award available tax credit in a proportionate amount based upon the scores of each application during the solicitation period; or

(c) The Executive Committee may elect to award available tax credits in an equal amount to each business applicant during the solicitation period

(2) No business applicant shall receive an award that is in excess of the available tax credit.

**KEY: rural business, tax credits**

**Date of Enactment or Last Substantive Amendment: 2014**

**Authorizing and Implemented or Interpreted Law: 63M-1-502**

Governor, Economic Development  
**R357-8**  
 Private Activity Bond Allocation of  
 Volume Cap Amount

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 38859

FILED: 09/11/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is created to outline the process by which applicant's request for bonding authority will be reviewed and the formula that is utilized to determine the allocation award given to the applicant.

**SUMMARY OF THE RULE OR CHANGE:** This rule provided definitions in addition to those provided for in statute. This rule outlines the formula utilized by the Private Activity Bonds

Board to determine the allocation of the federally provided volume cap amount. The considerations and formula include: distribution being considered on a first come first served basis, illustrative lists of typical considerations made for each type of applicant, overall community need and impact, applicant's past ability to utilize the activity bonds allocated, etc.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-1-3004(7)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This program is a self-funded program through fees. This rule does not alter the amount of fees received by the program and therefore there is no new cost or savings to the state.

◆ LOCAL GOVERNMENTS: This program does not deal directly with or impact local governments. This rule does not change the non-existence of any interaction and therefore does not affect local governments. A small positive impact could be felt in increased local tax revenue provided by the applicants when utilizing bonds to create or grow their housing or manufacturing project in any given local municipality.

◆ SMALL BUSINESSES: The impact to small business is minimal and positive as this provides a more streamlined and transparent process in an applicant ascertaining the viability of their application. Otherwise, there is no impact to small business because this rule does not address any general small business practices outside of offering a different financing mechanism.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons impacted will most likely be housing developers. This rule will outline how their applications for allocation volume cap amount will be reviewed and how their allocation will be calculated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not address fees, which is the only source for compliance costs. Thus, this rule will not create any new compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The agency is excited to continue to offer an alternative financing source for specific industries in the state. The fiscal impact to businesses as a result of this rule is only positive in regards to the potential financing that some businesses can qualify for.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2014

AUTHORIZED BY: Val Hale, Executive Director

**R357. Governor, Economic Development.**

**R357-8. Private Activity Bond Allocation of Volume Cap Amount.**

**R357-8-1. Purpose.**

The purpose of this rule is to establish a formula for determining the volume cap amount allocated to each applicant applying for private activity bonds.

**R357-8-2. Authority.**

UCA 63M-1-3004 requires the office make rules establishing the manner for allocating the volume cap amount for private activity bonds.

**R357-8-3. Definitions.**

(1) "Applicant" means an entity which falls into one of the Allotment accounts created in Section 63M-1-3006 and who is applying for private activity bonds.

(2) "Available Volume Cap" means the unencumbered amount of private activity bonding authority provided by Section 146 of the IRS code.

(3) "Application" means either the State of Utah Federal Low-Income Housing Credit Consolidated Application Form, for multi-family applicants or the Private Activity Bond Authority Manufacturing Facility Application for the, manufacturing or exempt facility applicants.

(4) "Board" means the Private Activity Bond Review Board.

(5) "Project" means the Applicant's plan for which the Private Activity Bonds are being sought.

(6) All other terms are used as defined by UCA 63M-1-3002.

**R357-9-4. Formula for Allocating Volume Cap Amount for Each Applicant.**

(1) The allocation of the total volume cap amount under this section will be distributed over the course of the calendar year on a first come, first serve basis.

(a) First come, first serve will be based upon the date in which the applicant submits a completed application to the board or its designee. Thus, applicants who apply in January are more likely to receive their total amount requested.

(b) Under the first come, first serve policy, the applicant will receive up to their requested amount, so long as there remains available volume cap to meet their request.

(c) The applicant's total award for each application will be determined by the board based upon the applicant's ability to meet the criteria as outlined in subsection 2 below.

(2) The decision of the allocated volume cap amount awarded to each applicant for each application submitted will be determined by the board.

(a) When deciding the portion of volume cap allocated to each applicant during any given application review round, the board will consider the criteria outlined in 63M-1-3005 and may also consider the following criteria in determining the amount of volume cap to be allocated to each applicant (this list is merely illustrative of typical considerations and is not intended to be an exhaustive list):

(i) Multi-Family Housing applicants:

(A) Bonds per unit;

(B) Percentage of private activity bonds per percentage of total cost;

(C) Bonds per number of households served;

(D) Percentage of public financing;

(E) Total cost per unit;

(F) Percentage of developer fee contributed to project;

(G) Average Median Income rents;

(H) Number of special needs units;

(I) Cash flow per unit ;

(J) Percentage of taxable tail on bonds;

(K) Project location-stronger consideration is given to projects located in:

(I) Underserved areas

(II) Communities without projects

(III) Difficult to develop areas as defined by HUD

(L) Project characteristics:

(I) Day Care

(II) Education center

(III) Applicant's experience with bonds

(IV) Size of project developed

(ii) Manufacturing Facility Applicants:

(A) New job creation;

(B) Retention of jobs;

(C) Training and education of employees;

(D) Bond to jobs ratio;

(E) Jobs created and/or retained that provide above average wages when compared to the community average wage

(F) Demonstrated need for tax-exempt financing;

(I) Show of realistic cash flow for first three years of operation

(II) Explanation for selecting variable or fixed rates

(G) Community Support:

(I) Financial support

(II) Zoning approval

(III) Tax increment financing

(IV) Deferral of fees

(H) Competitive costs for construction and equipment related expenses:

(I) Ready-to-go Status;

(I) Manufacturing Facility zoned for use

(II) Proximity of infrastructure to site

(III) Need for special infrastructure

(IV) Environmental study, if required by lender

(V) Current title report and site plan of project

(VI) Building description

(J) Status of project's financing at time of application;

(K) Selection of bond counsel;

(L) Letter from bond counsel opining the project qualifies for Private Activity Bonds;

(M) Selection of investment banker or if private placement, buyer of the bonds;

(N) Detailed commitment letters from all financial entities involved.

(O) Ability to utilize bonds within the calendar year of issuance

(iii) All allotment account applicants:

(A) Overall community need and impact of the project;

(B) Applicant's past experience and utilization of Private Activity Bonds;

(b) When considering multiple applications during any given review round, the board may choose to award each applicant an equal share of the available volume cap, so long as they submitted their application prior to the deadline posted on the board's website.

(c) The board's staff will work with the applicant during a review period prior to the board review meeting to ensure that all materials necessary to be considered by the board are gathered and completed.

(i) The materials necessary to be considered are determined by the board and available on the board's website.

(ii) The applicant will not be considered unless and until all materials are provided and complete.

**KEY: allocations, private activity bonds, volume caps**

**Date of Enactment or Last Substantive Amendment: 2014**

**Authorizing and Implemented or Interpreted Law: 63M-1-3004(7)**

**Human Services, Administration,  
Administrative Services, Licensing  
R501-12  
Child Foster Care**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 38862

FILED: 09/15/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being updated to reflect changes in the best practices and standards of child foster care licensing.

**SUMMARY OF THE RULE OR CHANGE:** This rule makes updates definitions; clarifies and updates initial licensing process, renewal licensing process, and adds the reapplication licensing process; increases capacity to provide respite care; updates the requirements for what is included in a home study; updates foster parent requirements; reduces

square footage requirements; eliminates ongoing foster care training as part of licensure; updates child's rights in foster care; clarifies safety and health requirements related to hazardous materials, medications, transportation, physical aspects of the home, behavior management, training in CPR; for special consideration for kinship placement and the Indian Child Welfare Act in the licensure process; and provides updated clarifications throughout the rule to create greater consistency and clarity to the process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings regarding the state budget. Current workload is unaffected by these changes. These are simply modifications to the process of foster care licensing and certification that is already occurring.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings regarding any local government. They are unaffected.

◆ SMALL BUSINESSES: It is anticipated that this rule will be cost neutral for most affected small business. For some licensed, child placing agencies there will be a minimal cost related to reporting information on certified homes to the Division of Child and Family Services (DCFS), making a mid-year unannounced visit to the certified home, and ensuring that home studies are thorough, completed by an social service worker, and address child placing needs. However, many or most child placing agencies are already in compliance with these best practices, and this rule will reflect only what is already being done. There will also be potential cost savings in the elimination of ongoing required training, depending on what their individual contracts may require. In addition, the more flexible square footage requirements are likely to attract more homes and create more available placements per home which presumably would be seen as a cost benefit for child placing agencies. Each individual agency's implementation of this rule and current practice will largely impact whether or not they experience cost or savings, but either could theoretically occur, and for some it would remain neutral.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that this rule will be cost neutral for foster families. They will likely experience cost savings in regards to more flexible square footage requirements, and more flexible and clear rules in relationship to safety hazards and hazardous materials. They will also experience cost savings by not being required by the Office of Licensing to have yearly training, although this may still be required in their agreements with DCFS. They will likely experience costs related to carbon monoxide detectors (\$15 to \$60 estimate per home), second story egress (\$30 to \$100 estimate per home), and CPR training (\$60 to \$100 estimate per person) being required.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As described above, there will be both potential costs and potential savings for foster parents and child placing agencies in achieving compliance with this new rule. The costs related to this rule in promoting the health and safety of foster children have been carefully weighed, including receiving feedback from a variety of affected stakeholders regarding changes. Based on this feedback, the Office of Licensing believes the compliance costs are appropriate for the added health and safety benefits created for children in car.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: While some child placing agencies may experience some costs related to coming into compliance with this rule, there is also the potential for this rule to increase their revenue based on possible increased per home capacity and ability to provide respite services beyond licensed capacity.

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

HUMAN SERVICES  
ADMINISTRATION, ADMINISTRATIVE SERVICES,  
LICENSING  
195 N 1950 W  
FIRST FLOOR  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov  
◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Diane Moore, Director

**R501. Human Services, Administration, Administrative Services, Licensing.**

**[R501-12. Child Foster Care.**

**R501-12-1. Authority.**

———— (1) Pursuant to 62A-2-101 et seq., the Office of Licensing, shall license child foster care services according to the following rules: Child foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Juvenile Justice Services, hereinafter referred to as DJJS.

**R501-12-2. Purpose Statement.**

———— (1) The purpose of these rules is to establish the minimum requirements for licensure of child foster homes and proctor homes for

children in the custody of the Department of Human Services, herein after referred to as DHS. Rules applying to child foster care are also applicable to proctor care unless otherwise specified below.

**R501-12-3. Definitions.**

(1) "Child foster care" means the provision of care which is conducive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

(2) "Proctor care" means the provision of child foster care for only one youth at a time placed in a licensed or certified proctor home. The youth shall be adjudicated to the custody of DJJS.

(3) "Foster care agency" is any authorized licensed private agency certifying providers for foster or proctor care services, hereinafter referred to as Agency.

(4) "Child" means anyone under 18 years of age with the exception of DJJS where custody and guardianship may be maintained to 21 years of age.

**R501-12-4. Licensing and Renewal.**

(1) Application: An individual or legally married couple age 21 and over may apply to be foster or proctor parents. The applicant shall be provided with an application and a copy of the foster care licensing rules. The application shall require the applicant to list each member of the applicant's household.

(2) Medical Information:

(a) At the time of application, each potential foster and proctor parent shall obtain and submit to the Agency or the Office of Licensing, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster or proctor parent. On an annual basis thereafter, each foster and proctor parent shall submit a personal health status statement.

(b) A psychological examination of a potential or current foster and proctor parent may be required by the Office of Licensing or the Agency if there are questions regarding the individual's mental status which may impair functioning as a foster or proctor parent. The psychological examination shall be arranged and paid for by the foster or proctor parent.

(3) References:

The applicant shall submit the names of no more than four individuals, two not related and one related, who may be contacted by the Agency or the Office of Licensing for a reference. These individuals, shall be knowledgeable of the ability of the potential foster or proctor parents to nurture children. Three acceptable letters of reference must be received by the Agency or the Office of Licensing before a license will be issued.

(4) Background Screening:

(a) Pursuant to 62A-2-120 and R501-14, criminal background screening, referred to as CBS, requires that all child foster or proctor care applicants or persons 18 years of age or older living in the home must have the criminal background screening successfully completed. This shall be completed on initial home approval and yearly thereafter.

(b) Pursuant to 62A-2-121 and R501-18, child abuse and neglect licensing data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of a severe type of abuse and neglect has been substantiated by the

Juvenile Court. This shall be done on initial home approval and yearly thereafter.

(5) Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster or proctor home. The home study shall be updated annually with a home visit.

(6) Provider Code of Conduct: Each foster and proctor care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

(7) Training: Each foster and proctor care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

(8) Approval or Denial:

(a) Following pre-service training and submission of all required documentation, the home study and an assessment of an applicant shall be completed.

(b) A license shall be issued for applicants who meet Foster Care Licensing Rules.

(c) The decision to approve or deny the applicant shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(d) No person may be denied a foster or proctor care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

(e) The provider shall be evaluated annually for compliance with foster care rules when renewing a license.

(f) Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

(g) Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

(h) Providers shall not be licensed or certified to provide foster or proctor care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101.

(i) The Office Director or designee may grant a time limited variance to a rule if it is in the best interest of the specific child and addresses how basic health and safety requirements shall be maintained in accordance with R501-1-8.

(j) All providers shall report any major changes in their lives to the Office of Licensing or Agency within 48 hours. These changes shall be re-evaluated within one month of the change by the Office of Licensing or Agency. A major change in the lives of the foster or proctor parents shall include, but is not limited to the following:

(i) death or serious illness among the members of the foster or proctor family;

(ii) separation or divorce;

(iii) loss of employment;

(iv) change of residence, or

(v) suspected abuse or neglect of any child in the foster or proctor home.

**R501-12-5. Training.**

~~(1) Applicants shall attend training required and approved by the applicable DHS Division or other approved entity and submit verification of completed training to the Office of Licensing or Agency annually.~~

~~(2) At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.~~

~~(3) Providers associated with an Agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.~~

**R501-12-6. Foster and Proctor Parent Requirements.**

~~(1) Personal characteristics of foster and proctor parents shall include the following:~~

~~(a) Foster and proctor parents shall be in good health, able to provide for the physical and emotional needs of the child.~~

~~(b) Foster and proctor parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster or proctor parents.~~

~~(c) Foster and proctor parents shall document and verify legal residential status when appropriate.~~

~~(d) Foster or proctor parents shall have the ability to help the child grow and change in behavior.~~

~~(e) Foster or proctor parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster or proctor care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to the Office of Licensing or Agency on an annual basis.~~

~~(f) Division employees shall not be approved as foster or proctor parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.~~

~~(g) Owners, directors, and members of the governing body for foster and proctor care agencies shall not serve as foster or proctor parents.~~

~~(h) Foster and proctor parents shall follow Agency rules and work cooperatively with the Agency, Courts, and law enforcement officials.~~

~~(2) Family Composition shall meet the following:~~

~~(a) The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.~~

~~(b) No more than two children under the age of two, shall reside in a foster home, including natural children.~~

~~(c) No more than two non-ambulatory children shall be in a foster home including infants under the age of two.~~

~~(d) No more than four foster children shall be in any one home.~~

~~(e) No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DJJS.~~

**R501-12-7. Physical Aspects of Home.**

~~(1) The foster and proctor home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.~~

~~(2) The physical facilities of the foster and proctor home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.~~

~~(3) The foster and proctor home shall be free from health and fire hazards. Each foster and proctor home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.~~

~~(4) There shall be sufficient bedroom space to provide for the following:~~

~~(a) rooms are not shared by children of the opposite sex, except infants under the age of two years;~~

~~(b) children do not sleep in the parents' room, except infants under the age of two years;~~

~~(c) each child has his or her own solidly constructed bed adequate to the child's size;~~

~~(d) a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and~~

~~(e) no more than four children are housed in a single bedroom.~~

~~(5) Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.~~

~~(6) Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.~~

~~(7) There shall be adequate indoor and outdoor space for recreational activities.~~

~~(8) Foster and proctor homes shall offer sufficiently balanced meals to meet the child's needs.~~

~~(9) All indoor and outdoor areas shall be maintained to ensure a safe physical environment.~~

~~(10) Areas determined to be unsafe, including but not limited to, steep grades, cliffs, open pits, swimming pools, hot tubs, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.~~

~~(11) Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.~~

~~(12) Exits: There shall be at least two means of exit on each level of the foster and proctor home.~~

**R501-12-8. Safety.**

~~(1) Foster and Proctor families shall conduct fire drills at least quarterly and provide documentation to the Office of Licensing and Agency.~~

~~(2) Foster and proctor parents shall provide and document training to children regarding response to fire warnings and other instructions for life safety.~~

~~(3) The foster or proctor home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.~~

~~(4) The foster or proctor home shall have an adequately supplied first aid kit such as recommended by the American Red Cross.~~

~~(5) Foster and Proctor parents who have firearms, ammunition, or other weapons shall assure that they are inaccessible to children at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitutional or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.~~

~~(6) Foster and Proctor parents shall not provide a weapon to a minor or permit a minor to possess a weapon in violation of Sections 76-10-509 through 76-10-509.7.~~

~~(a) The Office shall identify whether a foster or proctor parent possesses or uses a firearm or other weapon and shall provide this information to the Division of Juvenile Justice Services and the Division of Children and Family Services for use in accordance with R512-302-4 and Section 63G-4-104.~~

~~(7) Foster and Proctor parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.~~

~~(8) There shall be locked storage for hazardous chemicals and materials.~~

#### **R501-12-9. Emergency Plans.**

~~(1) Foster and Proctor parents shall have a written plan of action for emergencies and disaster to include the following:~~

- ~~(a) evacuation with a pre-arranged site for relocation;~~
- ~~(b) transportation and relocation of children when necessary;~~
- ~~(c) supervision of children after evacuation or relocation, and~~
- ~~(d) notification of appropriate authorities.~~

~~(2) Foster and Proctor parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.~~

~~(3) Foster or Proctor parents shall immediately report any serious illness, injury or death of a foster or proctor child to the appropriate Division or Agency and the Office of Licensing.~~

#### **R501-12-10. Infectious Disease.**

~~(1) Foster and Proctor parents shall contact their local health department for assistance in preventing or controlling infectious and communicable diseases in the home. In the event of an infectious or communicable disease outbreak, foster and proctor parents shall follow specific instructions given by the local health department.~~

#### **R501-12-11. Medication.**

~~(1) Foster and Proctor parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.~~

~~(2) Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.~~

~~(3) Non-prescriptive medications may be administered by foster or proctor parents according to manufacturer's instructions.~~

~~(4) Medications shall not be administered by the foster or proctor child.~~

~~(5) Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or Agency worker.~~

~~(6) There shall be locked storage for medication.~~

#### **R501-12-12. Transportation.**

~~(1) Foster and Proctor parents shall provide transportation. In case of an emergency a means of transportation shall be arranged by the foster or proctor parents.~~

~~(2) Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.~~

~~(3) Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.~~

~~(4) An emergency telephone number shall be in the vehicle used to transport children.~~

~~(5) Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by the American Red Cross.~~

#### **R501-12-13. Behavior Management.**

~~(1) Foster and Proctor parents shall provide supervision at all times.~~

~~(2) Foster and Proctor parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.~~

~~(3) The foster or proctor parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.~~

~~(4) Passive restraint shall be used only in behaviorally-related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.~~

~~(5) Foster and Proctor parents shall inform the Division or Agency worker of any extreme or repeated behavioral problems of a child placed in the foster or proctor home.~~

#### **R501-12-14. Child's Rights in Foster and Proctor Care.**

~~(1) The foster and proctor parent shall adhere to the following:~~

~~(a) allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special prescribed diet;~~

~~(b) allow the child to participate in family activities;~~

~~(c) protect privacy of information;~~

~~(d) not make copies of the child's records;~~

~~(e) explain the child's responsibilities, including household tasks, privileges, and rules of conduct;~~

~~(f) not allow discrimination;~~

~~(g) treat the child with dignity;~~

~~(h) allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise;~~

~~(i) follow visitation rights as provided by DHS or Agency worker;~~

~~(j) allow the child to send and receive mail providing that security and general health and safety requirements are met, foster or~~

proctor parents may only censor or monitor a foster or proctor child's mail or phone calls by court order;

- (k) provide for personal needs and clothing allowance, and
- (l) respect the child's religious and cultural practices.

#### **R501-12-15. Record Keeping.**

(1) Foster and Proctor parents shall maintain the following:

- (a) current license certificate;
- (b) copy of each contract with DHS;
- (c) record of money provided to each foster or proctor child;
- (d) record of expenditures for each foster or proctor child;

and

- (e) documentation of special need payments on behalf of the foster or proctor child.

(2) The Office of Licensing and Agency staff shall maintain a separate record for each child foster or proctor care home or Agency.]

#### **R501-12. Foster Care Services.**

##### **R501-12-1. Authority.**

This Rule is authorized by Sections 62A-2-101 et seq.

##### **R501-12-2. Purpose Statement.**

(1) This Rule establishes standards for the licensure of foster parents for children in the custody of DHS, inclusive of its Divisions.

(2) This Rule establishes standards that must be utilized by child-placing foster agencies for the certification of foster parents to provide care for foster children.

(3) This Rule establishes compliance standards for licensed and certified foster parents.

##### **R501-12-3. Definitions.**

As used in this Rule:

- (1) "Abuse" includes but is not limited to:
  - (a) actual, attempted, or threatened non-accidental harm, to the physical, psychological, or emotional health of a child;
  - (b) the use of confinement, physical restraint, medication, or isolation that causes or may cause harm to a child;
  - (c) the deprivation of treatment, food, or hydration to a child;
  - (d) causing physical injury or pain, including but not limited to bleeding, bruising, swelling, dislocation, contusion, laceration, burning, bone fracture, bodily damage, or death;
  - (e) corporal punishment, including but not limited to hitting or slapping;
  - (f) domestic violence related abuse;
  - (g) sexual abuse or sexual exploitation; or
  - (h) severe emotional abuse, severe physical abuse, or emotional or psychological abuse, as these terms are defined in section 62A-4a-101.
- (2) "Agency" means a child-placing foster agency licensed by the DHS Office of Licensing to certify foster parents.
- (3) "Chemical restraint" means any drug or substance used to control a child's behavior or movement that is not prescribed and monitored by the child's personal physician.
- (4) "Child" means a person under 18 years of age or a person under 21 years of age who remains subject to the continuing jurisdiction of the Utah Juvenile Court.
- (5) "Child care" is defined in Section 26-39-102.

(6) "DCFS" means the DHS Division of Child and Family Services.

(7) "DHS" means the Utah Department of Human Services.

(8) "Direct access" is defined in section 62A-2-101.

(9) "DJJS" means the DHS Division of Juvenile Justice Services.

(10) "Foster care" means the temporary provision of family based care for a foster child by a foster parent.

(11) "Foster parent" means a substitute parent licensed by the DHS Office of Licensing or certified by a licensed child-placing foster agency, and includes the spouse of the primary applicant. Foster parents may also be referred to by other titles, including but not limited to proctor foster parents, professional foster parents, resource families, or kinship caregivers.

(12) "Hazardous material" means any substance that if ingested, inhaled, ignited, used, or touched may cause significant injury, illness, or death. These substances include but are not limited to:

- (a) pesticides;
- (b) gasoline;
- (c) bleach, including bleach based cleansers;
- (d) compressed air
- (e) ammonia, including ammonia based cleansers;
- (f) chemical drain openers;
- (g) hair relaxers/permanents;
- (h) kerosene;
- (i) spray paint;
- (j) paint thinner;
- (k) automotive fluids;
- (l) toxic glues (excludes non-toxic glues);
- (m) oven cleaners;
- (n) matches/lighters/lighter fluid;
- (o) cleaning aerosols;
- (p) medications; and
- (q) ultra and concentrated detergent capsules.

(13) "Home study" means the written assessment of an applicant's ability to:

- (a) comply with all applicable statutes and administrative rules related to providing foster care;
- (b) meet the physical and emotional needs of a child in foster care; and
- (c) actively engage in achieving the custodial agency's identified outcomes for foster children.

(14) "Human services program" is defined in Section 62A-2-101.

(15) "Maltreatment" includes but is not limited to group punishments for the misbehavior of individuals; disrespecting, bullying, provoking, intimidating, or agitating a child; violating the child's rights as described in R501-12-13; unreasonably withholding emotional response or stimulation; or the actual, attempted, or threatened denial of access to the child's foster home for any purpose unrelated to safety.

(16) "Mechanical restraint" means any device used to control or restrict a child's free movement, including but not limited to a locked door that the child cannot open, a locked window that the child cannot open, handcuffs, belts, straps, ties, or restraint jackets. Mechanical Restraints do not include safety devices used for their intended purposes, such as seatbelts.

(17) "Medication" means any over-the-counter or prescription drug, vitamin, or supplement in any form.

(18) "Neglect" includes but is not limited to actual, attempted, or threatened failure to provide sufficient nutrition, hydration, sleep, clothing, bedding, shelter, medical services, dental services, educational services, supervision, or the care or treatment prescribed by the child's service or treatment plan.

(19) "Passive physical restraint" means non-violent holding techniques that temporarily restrict a child's free movement, and are used solely to prevent the child from harming any person, animal, or property, or to allow the child to regain physical or emotional control.

(20) "Poverty Guidelines" means the current US Department of Health and Human Services listing of poverty levels as determined by the number of members of a family (see <http://www.direct.ed.gov/RepayCalc/poverty.html>).

(21) "Reside" Anyone living in the home for thirty days.

(22) "Respite care" means the short term provision of family based care for a foster child by one foster parent in order to provide relief to another foster parent.

(23) "Restraint" means the use of physical force or a mechanical device to restrict a child's freedom of movement or a child's normal access to his or her body, and includes the use of a drug or substance that is not prescribed by the child's physician, and is used to control the child's behavior or restrict the child's freedom of movement.

(24) "Sexual abuse" includes but is not limited to actual, attempted, or threatened sexual contact with a child, or a sexual offense described in Title 76 Chapter 5, Offenses Against the Person.

(25) "Sexual exploitation" includes but is not limited to employing, using, persuading, inducing, enticing, or coercing a child to pose in the nude, to observe or participate in sexual acts, or to engage in any sexual or simulated sexual conduct.

(26) "Sick" means to have a fever, to be experiencing ongoing or severe diarrhea, unexplained lethargy, respiratory distress, ongoing or severe vomiting, or pain or other symptoms that are ongoing or severe enough to impair a child's ability to participate in normal activity.

#### **R501-12-4. Initial, Renewal, and Reapplication Process.**

(1) Initial Application for Licensure or Certification: An individual or legally married couple age 21 or over may apply to be a foster parent. The applicant shall provide:

(a) Application Forms: A completed Office of Licensing or Agency foster care application that lists each member of the applicant's household must be submitted, including the following documents signed by the applicant/s:

- (i) a confidentiality agreement;
- (ii) a DHS Provider Code of Conduct signature form; and
- (iii) a verification that the applicant/s have read and understand R501-12 Foster Care Services;

(b) Background Screening: a completed background screening application for each member of the household who is 18 years of age or older, including any supplemental documentation that the application requires;

(c) Financial Viability: a written statement of household income and expenses, together with consecutive current pay stubs or income tax forms;

(i) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office of Licensing or Agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(d) Training: agency provided verification of successful completion of agency approved pre-service training by each applicant within the past 24 months, and current CPR/first aid certification for each prospective foster parent. While CPR classes may be accessed online, final CPR certification must be an in-person certification.

(2) Medical Assessment:

(a) Each applicant shall authorize their current licensed physician, physician's assistant or nurse practitioner to complete and send a signed medical reference report directly to the Office of Licensing or Agency. Medical reference reports must assess the ability of the individual to be a foster parent.

(b) A psychological examination of a prospective or current foster parent may be required by the Office of Licensing or the Agency if, in the sole discretion of the Office of Licensing or the Agency, there are questions regarding the individual's mental status which may impair functioning as a foster parent. The prospective or current foster parent shall authorize their psychologist, psychiatrist, or Licensed Clinical Social Worker (or equivalent license recognized by the Division of Occupational and Professional licensing) to complete and send a signed psychological report that assesses the ability of the individual to be a foster parent directly to the Agency or the Office of Licensing

(c) Medical and psychological examinations shall be paid for by the prospective or current foster parent.

(d) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny or revoke an application or license if a medical reference report or psychological examination reveals reasonable concerns regarding an applicant's ability to provide foster care services.

(3) References:

(a) At the time of initial application, the applicant/s shall submit the names, mailing address, email addresses, and phone numbers of no more than four individuals who will be contacted by the agency or the Office of Licensing and asked to provide a reference letter. These individuals shall be knowledgeable regarding the ability of the applicant/s to provide a safe environment and to nurture foster children. No more than one reference may be a relative of the applicant. Only the four original reference individuals submitted will be considered.

(b) A minimum of three out of the four individuals must submit reference letters directly to the Agency or the Office of Licensing. A minimum of three reference letters received must be acceptable to the Agency or the Office of Licensing.

(c) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny an application if a reference reveals reasonable concerns regarding an applicant's ability to provide foster care services.

(4) Background Screening:

(a) Each applicant and all persons 18 years of age or older residing in the home shall submit a background screening application as part of the initial application. A background screening application is also required at the point any new individual over the age of 18 moves into the home. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or

older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14.

(b) A background screening approval shall not be transferred from one Agency to another Agency.

(c) A foster parent shall not permit any adult in the foster parent's home to have unsupervised direct access to a foster child unless the adult's background screening application is approved by the Office of Licensing.

(d) A foster parent shall immediately notify the Office of Licensing or Agency if any person in the home is charged with or under investigation for any criminal offense or allegation of abuse, neglect, or exploitation of any child or vulnerable adult.

(e) Pursuant to section 62A-4a-1003(2), Licensing shall review and evaluate information from the Division of Child and Family Services Management Information System for the purpose of licensing and for the purpose of monitoring all individuals who reside in the foster parents' home. When, in the professional judgment of the Office of Licensing, a supported or substantiated finding against any individual who resides in the foster parents' home may pose a risk of harm to a foster child, the Office of Licensing may issue a safety plan or a sanction on the license of the foster parent or Agency

(5) Home Study:

(a) The Office of Licensing or Agency is not required to perform a home study until after the background screening applications of all persons 18 years of age or older who reside in the home are approved.

(b) A narrative home study shall be completed by a Licensing Specialist in the Office of Licensing or a licensed social worker or mental health worker (SSW or higher) licensed by the State of Utah.

(c) The home study shall include, but not be limited to:

(i) background and current information of each caregiver, including but not limited to information regarding family of origin, discipline used by parents, family history or presence of abuse or neglect, use of substances, education, employment, relationship with extended family, mental and physical health history, stress reduction techniques, values, and interests;

(ii) marital relationship information, including but not limited to areas of conflict, communication, how problems are resolved, and how responsibilities are shared;

(iii) family demographical information, including but not limited to ages, ethnicity, languages spoken, dates of birth, gender, relationships, and history of adoption;

(iv) family characteristics including but not limited to functioning, cohesion, interests, work/life balance, family activities, ethnicity, culture, and values;

(v) child care and supervision arrangements;

(vi) physical characteristics of the home, including neighborhood and school information;

(vii) motivation for doing foster care, including assessment of interest in adoption vs. foster care only;

(viii) assessment of understanding and expectations of children in foster care;

(ix) previous experience caring for children;

(x) current and planned methods of discipline, use of privileges, family rules;

(xi) previous experience with children with special needs or trauma histories;

(xii) assessment of informal and formal supports;

(xiii) assessment of willingness and ability to access support and resources;

(xiv) finances, including bankruptcies;

(xv) applicant strengths and weaknesses;

(xvi) applicant history of any and all previous applications, home studies, or licenses/certifications related to providing foster care;

(xvii) assessment of ability to actively engage in achieving the custodial agency's identified outcomes for foster children; and

(xviii) recommendations for child matching, capacity, training, and support needs.

(6) Foster Parent Annual Renewal Application: A foster parent who wishes to remain authorized to provide foster care services shall submit a renewal paper work at least 30 days and no longer than 90 days prior to license expiration. Background screening approvals and renewal activities have to be completed prior to license expiration. Foster parent shall provide or otherwise submit to the following annually:

(a) Signed renewal application, including a signed confidentiality agreement, a signed DHS Provider Code of Conduct signature form, and a signed verification that the applicant/s have read and understand R501-12 Foster Care Services.

(b) Health Statement: Each foster parent shall submit a personal health status statement together with their renewal application; including new medical references if there have been changes to a foster parent's health status over the past year.

(c) Background Screening: Each foster parent and all persons 18 years of age or older residing in the home shall submit a background screening application with each renewal application. A background screening application is also required at the point any new individual over the age of 18 moves into in the home. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14.

(d) Financial Viability: a written statement of household income and expenses, together with consecutive current pay stubs or income tax forms.

(i) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office of Licensing or agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(e) Proof of current CPR/first aid certification.

(f) The home study shall be updated in writing annually after a home visit and safety inspection by a Licensing Specialist in the Office of Licensing or a licensed social worker or mental health worker (SSW or higher) licensed by the State of Utah. Updates should address all changes to the required home study information outlined in this rule, and an assessment of the family's experience over the past year as a foster parent.

(7) Reapplication: A previously licensed or certified foster home is subject to the same requirements as an initial application, with the following exceptions:

(a) Each applicant shall disclose all previous foster care licenses and certifications, including those outside the State of Utah.

(b) Previously licensed homes shall request a written reference from the DCFS region, or out-of-state equivalent, where they last held a foster care license to be sent directly to the Office of Licensing or Agency. Previously certified homes shall request a written reference letter from the last agency where they were certified, and every agency they have been certified by within the past 3 years, to be sent directly to the Office of Licensing or Agency.

(c) Each applicant shall sign releases of information for any agency where they previously provided certified or licensed foster care.

(d) Reapplication of previously licensed or certified homes may utilize an update of the previous home study as long as the home study was created by the same agency currently relicensing or recertifying the home.

(e) If 12 months or less since lapse of any license or certification, non-agency references will be waived.

(f) If 12 months or less since lapse of any license or certification, physician's statement shall be waived. Personal Health statement is still required.

(g) If 24 months or less since lapse of any license or certification, initial training requirements will be waived as long as there is not a change in licensing/certifying agency. A change in agency requires new initial training.

(8) Approval or Denial:

(a) The decision to approve or deny the applicant to provide foster services shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(b) No person may be denied a foster care license or certification on the basis of the religion, race, color, or national origin of any individual.

(c) The approval of a license or certification is not a guarantee that a foster child will be placed or retained in the foster parent's home.

(f) Foster parents shall not be licensed or certified to provide foster or care services in the same home in which they are providing child care or another licensed human services program.

(g) In order to promote health and safety, the Office of Licensing or Agency may issue a license that includes additional restrictions unique to the circumstances of the license.

(h) If a license or certification is denied, an applicant may not reapply for a minimum of 90 days from the date of denial.

#### **R501-12-5. Foster Parent Requirements.**

(1) Foster parents shall:

(a) be in good health and emotionally stable;

(b) be able to provide for the physical, social, mental health, and emotional needs of the foster child;

(c) be responsible persons who are 21 years of age or older;

(d) provide documentation of legal residential status;

(e) have the ability to help the foster child thrive;

(f) not be dependent on foster care reimbursement for their own expenses, outside of those expenses directly associated with providing foster care services; and

(g) provide updated medical, social, financial, or other family information when requested by the Office of Licensing or Agency.

(2) DHS employees shall not be licensed or certified as foster parents for children in the custody of their respective Divisions,

unless they qualify as kinship providers for the child in accordance with Utah Code Ann. Section 78A-6-307. An employee may provide foster services for children in the custody of a different Division only with the prior written approval of both Divisions' Directors in accordance with DHS conflict of interest policy.

(3) Agency owners, directors, managers, and members of the governing body shall not be certified to provide foster care services for children placed with or by the Agency.

(4) Foster parents shall cooperate with the Office of Licensing, Agency, courts, and law enforcement officials.

(5) Each foster parent shall read, sign, and comply with the DHS Provider Code of Conduct.

(a) A foster parent shall not abuse, neglect, or maltreat a child through any act or omission.

(b) A foster parent shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, or maltreat a child.

(6) No more than two children under the age of two, including children who are members of the household and foster children, shall reside in a foster home.

(7) No more than two non-ambulatory children, including children who are members of the household and foster children, shall reside in a foster home.

(8) Except as provided by Section 62A-2-101(14)(b) and R501-12-5(10), no more than three foster children shall reside in a foster home.

(9) Foster parents may provide respite care in their home as long as they remain in compliance with licensing rules in regards to each child placed for foster and respite care. Foster parents may provide respite care when the additional foster child(ren) exceed their licensed capacity only as follows:

(a) Respite care is limited to a maximum of 10 days within any 30 day period.

(i) For foster children who are not siblings, each day of respite for each individual child counts as one day of respite care.

(ii) For foster children who are siblings, each day of respite for a sibling group receiving respite in the same foster home at the same time counts as one day of respite care.

(b) The foster home must have no licensing sanctions currently imposed, including corrective action plans or conditional licenses.

(c) Total number of foster and respite children in a home at one time shall not exceed six unless all but one or two of the children are part of a single sibling group.

(10) A foster parent shall report all major changes or events to the Office of Licensing or Agency within 48 hours. The Office of Licensing or Agency shall evaluate major changes to determine whether the foster parent remains able to provide foster care services. A major change in the lives of foster parents includes, but is not limited to:

(a) the death or serious illness of a member of the foster parent's household;

(b) change in marital status;

(c) loss of employment;

(d) change in household composition, such as the birth or adoption of a child, addition of household members, or tenants; or

(e) allegations of abuse or neglect of any child or vulnerable adult against any member of the foster parent's household.

(11) A foster parent shall report any potential change in address in advance to their licensor or agency.

- (a) Licenses and certifications are site specific.
- (b) An adjoining dwelling with a separate address that is not accessible from the foster home is not considered part of the foster home site.
- (c) A foster child shall not be moved into a home that is not licensed or certified to provide foster care.

**R501-12-6. Physical Aspects of Home.**

- (1) All indoor and outdoor areas of the home shall be maintained to ensure a safe physical environment.
- (2) The home shall be free from health and fire hazards.
- (3) The home shall have a working smoke detector and a working carbon monoxide detector on each separated level.
- (4) The home shall have at least one approved, fully charged fire extinguisher readily accessible to the main living area. An approved fire extinguisher shall be a minimum of 2A:10BC five point rated multi-purpose, dry chemical fire extinguisher.
- (5) Each bathroom shall have a lock sufficient to preserve the privacy of the occupant.
- (6) The home shall have sufficient bedroom space to provide for the following:
  - (a) a bedroom shall not be shared by children who are over the age of two and of the opposite sex;
  - (b) a foster parent's bedroom may only be shared with foster children who are two years of age or younger;
  - (c) a foster parent's bedroom shall not be considered in calculating the allowable bedroom space for foster children;
  - (d) a foster child shall not share a bedroom with other adults in the home;
  - (e) each foster child has his or her own solidly constructed, non-portable bed adequate to the child's size;
  - (f) a minimum of 40 square feet per child, excluding adjoining bathrooms and storage space;
  - (g) no more than four children are housed in a single bedroom that houses at least one foster child;
  - (h) bedrooms used for foster children shall be comparable to other similarly utilized bedrooms in the home, including but not limited to access, location, space, finishings, and furnishings; and
  - (i) bedrooms used by foster children shall have a source of natural light and shall be equipped with a screened window that opens and provides egress to the outdoors.
- (7) Closet or dresser space shall be provided within the bedroom for the foster child's personal possessions and for a reasonable degree of privacy.
- (8) The home shall have space for recreational activities.
- (9) Foster parents shall offer nutritious, balanced meals that meet each foster child's individual needs.
- (10) The home shall be maintained at temperatures between 65-82 degrees Fahrenheit.
- (11) The home shall have a working refrigerator, cooking appliances, and functional indoor plumbing.
- (12) Hazards on the property shall be abated. These areas include but are not limited to fall hazards of 3 feet or greater (steep grades, cliffs, open pits, window wells, stairwells, elevated porches, retaining walls, etc), drowning hazards (swimming pools, hot tubs, water features, ponds or streams, etc), burn hazards (fireplaces, candles, radiators, water, etc), unstable heavy items (televisions, bookshelves, etc), high voltage boosters, or dangerous traffic

conditions. These hazards shall be mitigated through the use of protective hardware, fences, banisters, railings, grates, natural barriers, or other licensor approved methods.

(13) The home and its contents shall be maintained in a clean and safe condition. Food, clothing, supplies, furniture, and equipment shall be of sufficient quantity, variety, and quality to meet the foster child(ren)'s needs.

(14) Exits: There shall be at least two exits on each accessible floor of the home. Each exit shall be accessible and adequately sized for emergency personnel. Multiple-level homes shall have a functional, automatic fire suppression system or an escape ladder, stairway, or other exterior egress to ground level accessible from each of the upper levels.

(15) Foster parents shall have and use child safety devices appropriate to the needs of the foster child, including but not limited to safety gates and electrical outlet covers.

(16) Home address is clearly visible and location is accessible.

**R501-12-7. Safety.**

- (1) A foster parent shall not smoke when a foster child is present. All smoking materials shall be inaccessible to foster children.
- (2) Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety upon the initial placement of a child and annually thereafter. This includes an evacuation plan that also anticipates the evacuation of a child who is non-ambulatory or who has a disability.
- (3) The home shall have a telephone on-site during all times that a foster child is present. The telephone must be able to receive and make calls and be recognized by the 911 system. Telephone numbers for emergency assistance shall be posted next to the telephone or in a central location visible to the child.
- (4) The home shall have a fully supplied first aid kit such as recommended by the American Red Cross.
- (5) Foster parents shall inform the Office of Licensing or the Agency if they possess or use a firearm or other weapon.
- (6) Firearms, ammunition, and other weapons shall be inaccessible to children at all times. Foster parents shall not provide a weapon to a child or permit a child to possess a weapon in violation of Sections 76-10-509 through 76-10-509.7.
- (a) Foster parents do not have the authority of a parent or guardian under Section 76-10-509.
- (b) Firearms may be stored together with ammunition only in a locked container commercially manufactured for the secure storage of firearms.
- (c) Firearms not stored in a locked container commercially manufactured for the secure storage of firearms shall be unloaded and securely locked. Ammunition for these firearms shall be kept securely locked in a separate location.
  - (i) The locked storage for firearms and ammunition shall not be accessible through the same keys or combinations.
  - (ii) Keys and combinations utilized to open locked storage for firearms and ammunition shall not be accessible to a foster child.
- (d) Firearms may be stored in display cases only if unloaded and rendered inoperable through the effective use of trigger locks, bolts removed, or other disabling methods.
- (e) This does not restrict an individual's rights regarding concealed weapons permits pursuant to UC 53-5-704.

(7) Foster parents who have alcoholic beverages in their home shall ensure that the beverages are closely monitored and inaccessible to children at all times.

(8) Hazardous materials shall be stored securely and remain locked when not in active use, and closely monitored while in active use.

(i) Hazardous materials shall be stored in the manufacturer's original packaging together with the manufacturer's directions and warnings; or

(ii) a container that complies with the manufacturer's directions and warnings and is clearly labeled with the contents, manufacturer's directions and warnings.

(9) Flammable substances, including but not limited to gasoline and kerosene, shall be locked in a ventilated storage area separate from living areas.

(10) General, common use, household items (excluding those identified as hazardous materials) shall be stored responsibly in consideration of the age, behavior, history, and cognitive and physical ability of each foster child in the home. The foster parent is responsible for consulting with the caseworker and child and family team regarding individual restrictions. General, common use, household items include, but are not limited to the following:

(a) oral hygiene products;

(b) hair and cosmetic products;

(c) facial and skin hygiene products;

(d) cutlery;

(e) laundry and dish detergent (excluding concentrated pods);

(f) cleaning wipes;

(g) rubbing alcohol;

(h) nail polish remover;

(i) laundry stain remover;

(j) propane attached to a grill;

(k) air fresheners and deodorizers; and

(l) spray furniture polish.

(11) Foster parents shall comply with all laws regarding the care and number of animals on their property.

(12) Foster parents shall ensure that the foster child has the safety equipment, supervision, and training necessary for the child to safely participate in an activity that has an inherent risk of bodily harm, injury, or death.

(a) These activities include but are not limited to participation in rock climbing, swimming, hunting, target practice, camping, hiking, use of recreational vehicles, and sports.

(b) Every precaution must be taken to participate in the respective activity as safely as possible. This includes, but is not limited to: wearing DOT/Snell approved helmets when riding off-highway vehicles (OHV), completing OHV education, personal watercraft or boating education, wearing Coast Guard approved lifejackets, and completing hunter's education.

(c) Foster parents shall follow any applicable statute pertaining to minors operating OHV's, personal watercraft, boats, and firearms.

(d) Foster parents shall not permit a foster child any access to firearms without first obtaining the written approval of the child's caseworker.

(13) Foster parents shall comply with any written safety plan required by the Office of Licensing or Agency which establishes additional safety requirements to protect the child from hazardous

conditions on the foster parent's property. A safety plan shall not waive any requirement of this R501-12.

#### **R501-12-8. Emergency Plans.**

(1) Foster parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation;

(b) transportation and relocation of foster children when necessary;

(c) supervision of foster children after evacuation or relocation; and

(d) notification of appropriate authorities.

(2) Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster parents shall immediately report any serious illness, injury, or death of a foster child to the appropriate Division or Agency and the Office of Licensing.

#### **R501-12-9. Infectious Disease.**

(1) In the event of an infectious or communicable disease outbreak, foster parents shall follow specific instructions given by the local health department.

#### **R501-12-10. Medication and Medical Emergencies.**

(1) Foster parents shall ensure that prescribed medication is administered according to the written directions of the foster child's health provider.

(a) Foster parents shall ensure that the foster child actually consumes the medication.

(b) Foster parents shall report any severe or unexpected side effects or reactions to the foster child's health provider.

(2) Medication shall only be given to the foster child for whom it was prescribed.

(3) Medication shall not be discontinued without the approval of the foster child's health provider.

(4) Non-prescription medications may be administered by foster parents according to manufacturer's instructions unless otherwise directed by the child's health provider.

(5) Medications shall not be administered or carried by the foster child unless approved in writing by the child's health provider.

(6) Medication shall not be used for behavior management or restraint unless prescribed in writing by the foster child's health provider and after notification to the Division or Agency worker.

(7) Medication shall remain locked at all times they are not in immediate, active use.

(a) Foster parents shall not leave medications in active use unattended.

(b) If a foster child requires immediate access to the child's medication, including but not limited to a child with asthma or diabetes, foster parents may carry a single dose of medication for active use on the foster parent's person.

(8) Medications shall remain in the original pharmacy or manufacturer's packaging.

(a) Foster parents shall not repackage medications or divide doses into alternative containers.

(b) Foster parents should partner with the pharmacy regarding any needed divisions of medication.

(9) Foster parents shall promptly take a foster child who has a medical emergency, who is sick, or who is injured, for an assessment by a medical practitioner.

(10) Foster parents shall comply with the treatment orders of the foster child's health provider.

(11) When a foster child is removed from the foster parent's home, all unused medications shall be transferred to the caseworker or Agency.

#### **R501-12-11. Transportation.**

(1) Drivers of vehicles carrying foster child/ren shall have a valid, current driver's license and valid, current vehicle insurance, and comply with all traffic regulations.

(2) Transportation of foster children shall be provided in an enclosed, registered vehicle that has functional seatbelts. Foster parents shall ensure that foster children properly utilize seatbelts and other safety equipment, including age and size appropriate car/booster seats. Recreational vehicles, including motorcycles, shall not be used for transportation.

(3) Emergency contact information, including but not limited to caseworker and agency information, shall be provided and accessible in each vehicle used to transport foster children.

(4) Each vehicle shall be equipped with a first aid kit.

#### **R501-12-12. Behavior Management.**

(1) Foster parents shall provide supervision appropriate to the age and needs of each foster child.

(2) Foster parents shall not use, nor permit the use of corporal punishment including but not limited to physical, mechanical, or chemical restraint, physical force, infliction of bodily harm or pain, deprivation of meals, rest or visits with family, or humiliating or frightening methods to discipline, coerce, punish, or retaliate against a child.

(3) Foster parents shall only use behavior management techniques appropriate for the child's age, behavior, needs, developmental level, and past experiences.

(4) Foster parents shall use the least restrictive method of behavior management available to control a situation.

(5) Foster parents shall only use behavior management techniques that are positive, consistent, and that promote self-control, self-esteem, and independence.

(6) Foster parents shall not use physical work assignments or activities that inflict pain as behavior management techniques. A physical work assignment or activity that results in minor sore muscles does not violate this subsection.

(7) Foster parents shall not abuse, threaten, ridicule, intimidate, or degrade a child.

(8) Foster parents shall not deny a child medical care, nutrition, hydration, clothing, bedding, sleep, or toilet and bathing facilities.

(9) Passive physical restraint shall be applied only by individuals who are trained in accordance with the non-violent intervention strategies of a state, regional, or nationally recognized behavior management program. Documentation of passive physical restraint training certification shall be submitted to the Office of Licensing or Agency with the initial and each renewal application.

#### **R501-12-13. Child's Rights in Foster Care.**

(1) Foster parents shall not violate a foster child's right to:

(a) eat nutritious meals with the family;

(b) eat the same food as the family, except when the child is provided with alternative food ordered by the child's physician;

(c) participate in family and school activities;

(d) privacy, including but not limited to maintaining the confidentiality of information about the child and not retaining copies of the child's records once the child is no longer placed there;

(e) be informed of the child's responsibilities, including household tasks, privileges, and rules of conduct;

(f) be protected from discrimination based upon the child's race, color, national origin, culture, religion, sex, sexual orientation, age, political affiliation, or disability;

(g) be protected from harm or acts of violence, including but not limited to protection from physical, verbal, sexual, or emotional abuse, neglect, maltreatment, exploitation, or inhumane treatment;

(h) be treated with courtesy and dignity, including but not limited to reasonable personal privacy and self-expression;

(i) communicate with and visit the child's family, attorney, physician, and clergy, except as restricted by court order;

(j) have clean clothes and personal hygiene needs met;

(k) participate in their own cultural traditions; and

(l) receive prompt medical care when sick or injured.

#### **R501-12-14. Additional Requirements for Agencies.**

(1) The Agency shall comply with all Office of Licensing rules that relate to their Child Placing Foster license.

(2) The Agency shall comply with Background Screening Rules, R501-14.

(3) The Agency shall recruit, train, certify, and supervise foster parents.

(4) The Agency shall verify completion of all of a foster parent's training requirements, including but not limited to CPR/First Aid training and training regarding the requirements of R501-12, prior to placing a foster child in the home.

(5) The Agency shall train each foster parent regarding the Agency's policies and procedures prior to placing a foster child in the home.

(6) The Agency shall provide the Department with identifying information of all certified foster homes via the DHS/DCFS Provider website located on the Human Services DHS/DCFS Employee website.

(7) The Agency shall maintain documentation of the initial and annual home studies of the foster parent's home.

(8) The Agency shall have a signed written agreement or contract with each foster parent that clarifies each party's expectations, obligations and responsibilities, including but not limited to the services to be provided to and by the foster parent, the provision of medical, remedial, treatment, and other specialized services to the child, limitations of authority, and financial arrangements.

(9) The Agency shall monitor and keep detailed documentation regarding foster parents' compliance with R501-12, including one unannounced visit to the foster home annually for the purposes of safety and compliance assessment annually in addition to any initial and renewal visits to the home.

(10) The Agency shall investigate all complaints and alleged violations of this rule. The Agency shall provide documentation to the Office of Licensing of any investigations into complaints and alleged violations of R501-12.

(11) The Agency shall provide written notification to each foster parent that informs the foster parent of the rights and responsibilities assumed by a foster parent who signs as the responsible adult for a foster child to receive a driver license, as described in Section 53-3-211. The Agency shall maintain documentation in the foster parent's file, signed and dated by the foster parent, acknowledging receipt of a copy of this written notification.

(12) The Agency shall have and comply with written policies and procedures regarding the denial, suspension, and revocation of a foster parent's certification to provide foster care services, which must include written notification of the foster parent's appeal process.

(13) The Agency shall provide documentation to the Office of Licensing and DCFS of any denial, suspension, revocation or other agency-initiated termination of a foster parent's certification. Documentation shall be provided within two weeks of the action.

(14) The Agency shall not grant any variance to this R501-12 or any other regulation without the prior written consent of the Director of the Office of Licensing.

**R501-12-15. Additional Requirements for DCFS Kinship and Specific Home Licensure.**

(1) An applicant may be licensed for the placement of a specific foster child or sibling group.

(2) The home study shall be conducted by an approved DCFS kinship home study specialist or by the Office of Licensing.

(3) A minimum of two reference letters received must be acceptable to the Agency or the Office of Licensing.

(4) The home study safety inspection and background screening approvals shall be successfully completed prior to the placement of the child in the home.

(5) A kinship or specific home license may not be utilized for the placement of any foster child other than the child designated on the license, and may not be utilized for respite care.

(6) If a kinship or specific home desires to provide general foster care services, they will close their specific license and submit to the requirements of a general foster care license.

(7) The Office of Licensing recognizes the importance of preserving family and cultural connections for children in foster care. In accordance with 62A-2-117.5 and the Indian Child Welfare Act, the Office of Licensing may issue a waiver of any rule in regards to a kinship/specific home that does not impact the health and safety of the specific child or sibling group. This requires prior written approval by the Director of the Office of Licensing.

**KEY: licensing, human services, foster care, certified foster care**  
**Date of Enactment or Last Substantive Amendment: [~~September 9, 2004~~2014]**  
**Notice of Continuation: October 18, 2012**  
**Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.**

**Human Services, Substance Abuse and Mental Health**  
**R523-22**  
**Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 38856  
 FILED: 09/09/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add a requirement that providers have separate classes for those under 21 years of age at the time the class is completed. This will allow the Under 21 classes to focus on not drinking until age 21.

**SUMMARY OF THE RULE OR CHANGE:** In Section R523-22-3, a requirement that providers have separate classes for those under 21 years of age at the time the class is completed is added.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 17-43-201 and Section 41-6a-502 and Section 41-6a-510 and Section 41-6a-528 and Section 62A-15-103 and Section 62A-15-105 and Section 63G-4-302 and Section 73-18-12 and Section 76-5-207 and Sections 62A-15-501 through 62A-15-503

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will not be any increased cost or savings to the state. The cost of DUI education is funded solely by the participants of the class.
- ◆ **LOCAL GOVERNMENTS:** There will not be any increased cost or savings to local governments. The cost of DUI education is funded solely by the participants of the class. Local governments do not fund this program.
- ◆ **SMALL BUSINESSES:** There will not be any increased cost or savings to the providers (small businesses). The cost of DUI education is funded solely by the participants of the class.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The agency believes that since the DUI education programs are already in place and many providers are already separating participants by this age criteria anyway that there should be minimal increases in the costs to the participants.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There may be an increase in the cost for the participants (DUI offenders) who take the classes. Since the agency does not regulate the cost of classes and they are market-driven, it's difficult to give an estimate, but it is expected to be minimal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will not be a fiscal impact on businesses. These programs are funded by the participants who attend the programs.

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 Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjones@utah.gov](mailto:jhjones@utah.gov)
- ◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at [raywinger@utah.gov](mailto:raywinger@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Doug Thomas, Director

**R523. Human Services, Substance Abuse and Mental Health.**

**R523-22. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders.**

**R523-22-1. Purpose and Statutory Authority.**

1. Purpose. These rules prescribe standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501 through 503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the participant examine the behavior that led to the arrest, (b) assist the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon the participant the severity of the DUI offense.

**R523-22-3. Certification Requirements for DUI Educational Providers.**

1. In order to operate, a potential DUI Educational Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification shall require the following:  
 a. A brief description and purpose of the agency, and an explanation of the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

b. The geographical area to be served;  
 c. The ownership and person or group responsible for agency operation;

d. The location and time that DUI classes would normally be held;

e. A list of instructors employed by the agency; and

f. A copy of their substance abuse treatment license.

g. An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

h. Copies of all materials, i.e. presentations, workbooks, written documents, photographs used in the presentation or distributed to participants during victim impact panels shall be submitted to the Division for approval prior to use.

i. A written plan that describes goals, objectives and format of in person victim impact panels to the Division for approval prior to use.

3. A DUI Educational Provider shall also:

a. Ensure that participant receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;

b. Allow no more than 25 persons, including participant and others to a class;

c. Follow the recommendations of the screening which has been provided;

d. Ensure that screenings are conducted by staff from a licensed treatment agency who have been trained in administering the screening tool;

e. Report the number of participant completing the DUI Educational Program to the Division at least every quarter;

f. Have policies ensuring confidentiality of information maintained on participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;

g. Ensure that Instructors follow the Division-approved curriculum;

h. Have available for review a copy of the Provider's charter, constitution, or bylaws;

i. Outline the eligibility criteria for admission to the program, including the screening tool used;

j. Ensure that all Instructors employed by the Provider have completed the Division required DUI training/certification;

k. Inform the Division of any licensing or address change:

l. Comply with all applicable local, state and federal laws and regulations.

m. Ensure that none of the Instructors are on probation or parole for any offense;

p. Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years;

q. Notify the Division in writing within 30 days if any Instructor has been arrested for any reason; ~~and~~

r. Provide separate classes for participants who are younger than 21 years of age at the completion of the course; and

4. Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants.

5. An participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by an assessment.

6. The Division shall issue the Provider a certificate after determination has been made that the applicant is in compliance with these standards.

7. The Division Director has the authority to grant exceptions to any of the certification requirements.

**KEY: DUI programs, certification of instructors**

**Date of Enactment or Last Substantive Amendment:** ~~[June 26,] 2014~~

**Notice of Continuation:** June 18, 2012

**Authorizing, and Implemented or Interpreted Law:** 17-43-201; 41-6a-502; 41-6a-510; 41-6a-528; 62A-15-103; 62A-15-105; 62A-15-~~201~~501 through 503; 63G-4-302; ~~17-43-301;~~ 73-18-12; 76-5-207

**Insurance, Administration  
R590-176  
Health Benefit Plan Enrollment**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38857

FILED: 09/11/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The changes to this rule are being made to comply with the Affordable Care Act (ACA), PHSA 2702, guaranteed Availability of Coverage, and PHSA 2705, Prohibited Discrimination Against Individual Participants Beneficiaries Based on Health Status.

**SUMMARY OF THE RULE OR CHANGE:** Changes to this rule are being made because the federal government now requires all individual and small group health benefit plans to guarantee coverage to all enrollees with no enrollment caps and have no underwriting criteria that must be met by enrollees before being covered. The definition of "Carrier" is being eliminated since it is already defined in Title 31A. These changes reflect changes already implemented by health insurers marketing health benefit plans.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 31A-2-201(3) and Subsection 31A-2-202(2)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to this rule will have no fiscal impact on the department or state budgets. There are no filing requirements that will increase revenues nor a change in the workload that will result in a change in department personnel.

◆ **LOCAL GOVERNMENTS:** The changes to this rule will have no impact on local governments. The changes deal solely with the relationship between the department and their health insurance licensees.

◆ **SMALL BUSINESSES:** Rule language is being removed because the ACA law provides consumer protections in applying for health coverage.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Rule language is being removed because the ACA law provides consumer protections in applying for health coverage.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:**

Insurers providing health benefit plans in Utah have been required to provide individual and small groups with health benefit plans that guaranteed coverage to all enrollees with no enrollment caps and no underwriting criteria to be met by enrollees before being covered. These coverage requirements are now being extended by the federal government. As far as Utah is concerned, the transfer of these requirements from state law to federal will create no fiscal impact on insurers, small businesses, or individuals.

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

The changes being made to this rule should have no fiscal impact on businesses. The federal government has just carried on with the same requirements that were already in our law.

**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 Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Todd Kiser, Commissioner

**R590. Insurance, Administration.**

**R590-176. Health Benefit Plan Enrollment.**

**R590-176-1. Authority.**

The commissioner's authority to promulgate this rule is provided in Sections 31A-2-201(3) and 31A-2-202(2).

**R590-176-2. Purpose and Scope.**

The purpose and scope of this rule is to provide enrollment requirements under Section 31A-30-108 for carriers who provide health benefit plan coverage to individuals and small employers as stated in Section 31A-30-104.

**R590-176-3. Definitions.**

(1) The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

(2) ~~"Carrier" means a covered carrier as defined in Section 31A-30-103.~~

(3) "Time period" means the period such as daily, weekly or monthly, as determined by the carrier, in which applications are grouped.

**R590-176-4. General Provisions.**

(1) Any attempt to selectively or unfairly delay, obstruct or otherwise hinder any person from obtaining coverage under Chapter 30 is a violation of Section 31A-30-108.

(2) Enrollment shall be equally available through all distribution systems ~~classes of business, and rating criteria categories~~.

(3) ~~Enrollment is available to small employers without respect to whether any eligible employee or dependent is classified as uninsurable.~~

(4) ~~The enrollment residency requirements do not supersede other dependent and child requirements of the Insurance Code.~~

(5) ~~When requested, a carrier must offer a Utah NetCare Plan in compliance with Section 31A-30-109.~~

(6) A carrier may not market or encourage producers to market individual or small employer health benefit plans in such a way that there is a lessened incentive to insure business with greater health risks.

(7) ~~Commission schedules shall be structured in compliance with R590-207, Health Agent Commissions for Small Employer Groups.~~

(8) ~~The carrier shall retain a signed statement from each covered small employer that the carrier offered to accept all eligible employees and their dependents at the same level of benefits under the health benefit plan provided to the employer.~~

(9) ~~An individual or small employer is considered uninsured if the individual or small employer:~~

(a) ~~does not have a health benefit plan; or~~

(b) ~~health benefit plan is with a carrier that has made an election under Subsections 31A-8-402.3(3)(e), 31A-8-402.5(3)(e), 31A-22-721(3)(e), 31A-30-107(3)(e), or 31A-30-107.1(3)(e).~~

(10) ~~All records regarding enrollment applications and underwriting determinations shall:~~

(a) be retrievable for examination by the time period the application was received;

(b) include all documents, indicating the applicable date, pertaining to the application and its underwriting; and

(c) be retained for the current year plus three years.

(4) ~~(b)~~ <sup>(5)</sup> The documents indicated in Subsection ~~[(4)(b)]~~ would include:

(a) application and date received,

(b) notifications to the applicant and the date of notification;

(c) records used in underwriting and date received; and

(d) underwriting decision and date of decision.

**R590-176-5. Application and Enrollment.**

(1) ~~An individual~~ <sup>Each</sup> carrier shall establish a procedure to determine the order of applications. The procedure shall group the applications into consistent time periods. ~~The enrollment cap may not be applied until the end of the time period in which it is met.~~ <sup>The</sup> ~~individual~~ carrier shall keep a record of all applications for coverage that includes the time period an application is received by the carrier.

(2) All applications shall be treated consistently.

(3)(a) A complete application shall be processed and a written notice of the decision communicated to the applicant within 30 days of the decision. ~~If an application is denied, the decision must include specific details explaining the denial.~~

(b) The carrier may not require that an application be complete in order to qualify as an application for coverage.

(c) If an application is incomplete, within 15 days from receipt of the application ~~;~~ a carrier shall notify the applicant of the areas that are incomplete and the information required to complete the application.

(d) Before an application can be ~~filed~~ <sup>rejected</sup> as incomplete, applicants shall have at least 30 days ~~;~~ after being notified additional information is required <sup>to provide the information.</sup>

~~(e) A date earlier than the postmarked date of the notice in Subsection (3)(c), may not be used as the date of notification.~~

(4) ~~The acceptance of an application may not be delayed pending the receipt of medical records. This does not apply to other required statements from applicants as provided in Subsection (3).~~

**R590-176-6. [Small Employer Enrollment.**

~~A small employer carrier shall:~~

(1) ~~permit an eligible employee, or a dependent of such employee, to enroll for coverage under the terms of the plan, if the eligible employee requests enrollment not later than 30 days after the eligibility date; and~~

(2) ~~enroll a new eligible employee and a dependent of such employee making timely application for coverage in a small employer group with existing coverage.~~

**R590-176-7. Individual Underwriting Criteria.**

(1) ~~Each carrier shall determine the number of individuals classified as uninsurable at initial enrollment. This determination shall be made in accordance with this rule.~~

(2) ~~An individual insured by the Utah Comprehensive Health Insurance Pool is classified as uninsurable.~~

(3) (a) ~~An individual may be classified as uninsurable if the individual has:~~

(i) ~~one or more medical conditions; or~~

(ii) ~~one or more prescriptions; and~~

~~(iii) the conditions, prescriptions, or both, are determined to have a total number of debit points equal to or greater than 99 debit points in the aggregate consistent with the Milliman Health Cost Guidelines – Small Group Medical Underwriting, June 2008, taking into account;~~

- ~~(A) elapsed time;~~
- ~~(B) additional criteria; and~~
- ~~(C) exception criteria.~~

~~(b) A carrier may not take into account conditions for which coverage is not provided. This includes conditions excluded as a pre-existing condition for which treatment is expected during the exclusion period if the applicant would not be considered uninsurable after the treatment.~~

~~(4) Determinations made by a carrier under Subsection (3) (iii) will be audited by an experienced independent underwriter retained by the board of the Utah Comprehensive Health Insurance Pool who will rely on the Milliman Health Cost Guidelines – Small Group Medical Underwriting, June 2008, to evaluate whether the debit points of the medical conditions, prescriptions, or both are equal to or greater than 99 debit points in the aggregate.~~

~~(5) A carrier may appeal a determination by the auditor under Section (4) that an individual has a combination of conditions, prescriptions, or both, that cause that individual to have debit points less than the number of debit points determined under Section (3) to the commissioner. The commissioner may appoint a designee to review these appeals.~~

~~(6) Only individuals enrolling under Subsection 31A-30-108(3) may be counted as uninsurable.~~

**R590-176-8. Individual Carrier Enrollment Cap Calculation and Certification.**

~~(1) Pursuant to Section 31A-30-110, an individual carrier may not decline enrollment until the carrier has:~~

- ~~(a) met its enrollment cap; and~~
- ~~(b) submitted a certification to the department in compliance with this section.~~

~~(2) An individual carrier may limit enrollment after submitting its certification.~~

~~(3) The commissioner may require additional enrollment after reviewing the certification.~~

~~(4) An officer of the individual carrier shall submit a certification that:~~

- ~~(a) lists the UC and CI as defined in Section 31A-30-103(28);~~
- ~~(b) lists the number of individual natural covered lives at the time of the certification;~~

~~(c) categorizes the UC into new applicants added to existing policies and newly issued policies;~~

~~(d) identifies the number of Comprehensive Health Insurance Pool participants; and~~

~~(e) identifies the qualifying conditions, prescriptions, or both that cause the persons making up the carrier's UC to be considered uninsurable under Section 31A-30-106(1) and Rule R590-176.~~

~~(5) Carriers, whose coverage count exceeds 200% of the coverage count as of the end of the prior year, shall determine the uninsurable percentage using counts as of the end of the most recent calendar quarter.~~

**R590-176-9. Solvency Waiver.**

~~A carrier that expects the requirements of Chapter 30 to place the carrier in supervision, insolvency or liquidation shall, within 15 days of such determination, submit a report to the commissioner. The report shall detail the financial consequences of Chapter 30 and request the specific waivers or modifications required to prevent supervision, insolvency or liquidation.~~

**R590-176-10. Enforcement Date.**

~~The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.~~

**R590-176-11. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: health insurance**

**Date of Enactment or Last Substantive Amendment:** ~~October 3, 2012~~ **2014**

**Notice of Continuation:** **December 19, 2011**

**Authorizing, and Implemented or Interpreted Law:** **31A-2-201; 31A-2-202**

**Insurance, Administration**  
**R590-259**  
**Dependent Coverage to Age 26**

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 38858

FILED: 09/11/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being updated to comply with the Affordable Care Act (ACA), PHS 2714, Extension of Dependent Coverage, and to make technical changes.

**SUMMARY OF THE RULE OR CHANGE:** Changes to the rule include: removing references in Sections R590-259-3 and R590-259-9 to the Utah Comprehensive Health Insurance Pool (Pool), which is no longer functioning; adding a subsection to clarify when an adult child can be excluded from a parent's health policy; removing Sections R590-259-5 and R590-259-6 because of changes by the ACA relating to dependent coverage to age 26 that now supersedes this rule; removing Section R590-259-7 that is no longer needed because it deals with health plans beginning before 01/01/2014; removing Section R590-259-8 because it is now covered in Rule R590-269; removing Section R590-259-9 because it deals with certification of insurability through the Pool, which no longer exists; and changing the name CHAMPUS to TRICARE.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-2-212(5)(b) and Subsection 31A-22-605(4)

450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: These changes have no fiscal impact on the department or state budget. They are essentially technical changes that withdraw responsibility for the regulation of dependent coverage from the state to the federal government via the ACA. Insurers have already made this adjustment. The federal ACA regulations are similar to those of our state, providing even more consumer protections. Insurers have already adjusted to these changes.

◆ LOCAL GOVERNMENTS: The changes to this rule deal with the withdrawal of regulatory requirements dealing with dependent insurance coverage to the age of 26 that is now the responsibility of the federal government. Local government has no regulatory authority in this matter.

◆ SMALL BUSINESSES: Insurance agencies should have had very little if any fiscal impact as a result of these changes. Their insurers are still covering dependents to the age of 26, even dependents that were previously uninsurable. Agents no longer have to find coverage for uninsurable dependent through the Pool.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals up to the age of 26 still have coverage under their parents' policies, only now under ACA regulations, they have coverage regardless of their dependent status and their insurability. Those who obtain coverage through an employer and are then excluded from their parent's plan, are guaranteed coverage in an individual plan. No longer can they be denied coverage by an insurer. Insurers who are now covering these individuals are allowed to adjust their rates to take in the additional risk.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals up to the age of 26 still have coverage under their parents' policies, only now under ACA regulations, they have coverage regardless of their dependent status and their insurability. Those who obtain coverage through an employer and are then excluded from their parent's plan, are guaranteed coverage in an individual plan. No longer can they be denied coverage by an insurer. Insurers who are now covering these individuals are allowed to adjust their rates to take in the additional risk.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes being made to this rule started to take effect in 2010. To date, the department is not aware of any fiscal impact that this has had on business in Utah.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Todd Kiser, Commissioner

**R590. Insurance, Administration.**

**R590-259. Dependent Coverage to Age 26.**

**R590-259-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-212(5)(b) and 31A-22-605(4).

**R590-259-2. Purpose and Scope.**

(1) The purpose of this rule is to clarify ~~[marketplace]~~ rules relating to the coverage of children in the individual and group health benefit plan markets ~~[that have experienced disruption arising from implementation of federal health care reform].~~

(2) ~~(a) Except as provided in R590-259-2(2)(b), this ]~~ This rule applies to any health insurer that provides individual or group health benefit plan coverage.

~~[ (b) Subject to R590-259-7, this rule applies to grandfathered plan coverage for individual and group health benefit plan coverage. ]~~

**R590-259-3. Definitions.**

In addition to the definitions in ~~[Section]~~ Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) ~~["Certificate of insurability" means a certificate issued to an individual by the Utah Comprehensive Health Insurance Pool, pursuant to Subsection 31A-29-111(5)(c).~~

~~(2) ]~~ "Grandfathered plan coverage" means coverage provided by a health insurer in which an individual was enrolled on March 23, 2010 for as long as it maintains that status in accordance with federal regulations.

~~(3)~~ "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

~~(4)~~ "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, ERISA, to the extent that the plan provides medical care, as defined in R590-259-3(1)(b), and including items and services paid for as medical care to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

~~(5)~~ "Health benefit plan" means a policy, contract, certificate or agreement offered by an insurer to provide, deliver,

arrange for, pay for or reimburse any of the costs of health care services.

(b) "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

(c) "Health benefit plan" does not include:

- (i) coverage only for accident, or disability income insurance, or any combination thereof;
- (ii) coverage issued as a supplement to liability insurance;
- (iii) liability insurance, including general liability insurance and automobile liability insurance;
- (iv) workers' compensation or similar insurance;
- (v) automobile medical payment insurance;
- (vi) credit-only insurance;
- (vii) coverage for on-site medical clinics; and
- (viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(d) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

- (i) limited scope dental or vision benefits;
- (ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or
- (iii) other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(e) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

- (i) coverage only for a specified disease or illness; or
- (ii) hospital indemnity or other fixed indemnity insurance.

(f) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

- (i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;
- (ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, [~~Civilian Health and Medical Program of the Uniformed Services~~ ~~(CHAMPUS)]TRICARE; or~~
- (iii) similar supplemental coverage added to coverage under a group health plan.

([6]5) "Health insurer" means an insurer that offers a health benefit plan.

[~~(7) "Individual carrier" has the same meaning as defined in Section 31A-30-103.~~

] ([8]6)(a) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals through a trust arrangement, association or other discretionary group that is not an employer plan, but does not include short-term limited duration insurance.

(b) For purposes of this subsection, a health insurer offering health insurance coverage in connection with a group health plan shall not be deemed to be a health insurer offering individual health insurance coverage solely because the insurer offers a conversion policy.

([9]7) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

([10]8) "Medical care" means amounts paid for:

(a) the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in R590-259-3([10]8)(a); and

(c) insurance covering medical care referred to in R590-259-3([10]8)(a) and (b).

([11]9) "Participant" adopts the meaning given under section 3(7) of ERISA.

([12]10) "Subscriber" means, in the case of individual health insurance contract, the person in whose name the contract is issued.

**R590-259-4. Eligibility for Dependent Coverage to Age 26; Definition of Dependent; Uniformity of Plan Terms.**

(1) A health insurer that makes available dependent coverage of children shall make that coverage available for children until attainment of 26 years of age.

(2) With respect to a child who has not attained 26 years of age, a health insurer shall not define dependent for purposes of eligibility for dependent coverage of children other than the terms of a relationship between a child and the plan participant, and, in the individual market, primary subscriber.

(3) A health insurer shall not deny or restrict coverage for a child who has not attained 26 years of age:

(a) based on the presence or absence of the child's financial dependency upon the participant, primary subscriber or any other person, residency with the participant and in the individual market the primary subscriber, or with any other person, student status, employment or any combination of those factors; or

(b) based on eligibility for other coverage, except as provided in R590-259-[7]4(6).

(4) Nothing in this rule shall be construed to require a health insurer to make coverage available for the child of a child receiving dependent coverage, unless the grandparent becomes the adoptive parent of that grandchild.

(5) The terms of coverage in a health benefit plan offered by a health insurer providing dependent coverage of children cannot vary based on age except for children who are 26 years of age or older.

(6) For plan years beginning before January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of children may exclude an adult child who has not attained 26 years of age from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent.

**~~R590-259-5. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status – Applicability; Opportunity to Enroll; Written Notice; Effective Date.~~**

~~(1) This section applies to any child:  
(a) whose coverage ended, or who was denied coverage, or was not eligible for group health insurance coverage or individual health insurance coverage under a health benefit plan because, under the terms of coverage, the availability of dependent coverage of a child ended before the attainment of 26 years of age; and~~

~~(b) who becomes eligible, or is required to become eligible, for coverage on the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010 by reason of the provisions of this section.~~

~~(2)(a) If group health insurance coverage or individual health insurance coverage, in which a child described in R590-259-5(1) is eligible to enroll, or is required to become eligible to enroll, in the coverage in which the child's coverage ended or did not begin for the reasons described in R590-259-5(1), and if the health insurer is subject to the requirements of this section the health insurer shall give the child an opportunity to enroll that continues for at least 30 days.~~

~~(b) The health insurer shall provide the opportunity to enroll, including the written notice beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.~~

~~(3)(a) The notice of opportunity to enroll shall include a statement that children whose coverage ended, or who were denied coverage, or were not eligible for coverage, because the availability of dependent coverage of children ended before the attainment of 26 years of age are eligible to enroll in the coverage.~~

~~(b)(i) The notice may be provided to an employee on behalf of the employee's child and, in the individual market, to the primary subscriber on behalf of the primary subscriber's child.~~

~~(ii) For group health insurance coverage:  
(A) the notice may be included with other enrollment materials that the health insurer distributes to employees, provided the statement is prominent; and~~

~~(B) if a notice satisfying the requirements of this section is provided to an employee whose child is entitled to an enrollment opportunity under R590-259-5(2), the obligation to provide the notice of enrollment opportunity under R590-259-5(3) with respect to that child is satisfied.~~

~~(c) The written notice shall be provided beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.~~

~~(4) For an individual who enrolls under R590-259-5(2), the coverage shall take effect not later than the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010.~~

**~~R590-259-6. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status – Group Health Plan Special Enrollee.~~**

~~(1) A child enrolling in group health insurance coverage pursuant to R590-259-5 shall be treated as if the child were a special enrollee, as provided under 45 CFR Section 146.117(d).~~

~~(2)(a) The child and, if the child would not be a participant once enrolled, the participant through whom the child is otherwise~~

~~eligible for coverage under the plan, shall be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status.~~

~~(b) For purposes of this subsection, any difference in benefits or cost-sharing requirements constitutes a different benefit package.~~

~~(3) The child shall not be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.~~

**~~R590-259-7. Grandfathered Group Health Plans – Applicability.~~**

~~(1) For plan years beginning before January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of children may exclude an adult child who has not attained 26 years of age from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent.~~

~~(2) For plan years, beginning on or after January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan shall comply with the requirements of R590-259-4 through 6.~~

**~~R590-259-8. Enrollment Periods.~~**

~~(1) An individual carrier shall offer:~~

~~(a) continuously enrollment for individuals applying for a new policy unless R590-259-9 applies; and~~

~~(b) for a dependent to be added to an existing policy:~~

~~(i) beginning May 1, 2011 and extending through June 15, 2011 for coverage effective July 1, 2011; and~~

~~(ii) at least once a year beginning 45 days prior to the policy renewal; or~~

~~(iii) continuously.~~

~~(2) During an enrollment period in R590-259-8(1), a dependent under the age of 19 shall be offered coverage on a guaranteed issue basis and without any limitations, pre-existing exclusions or riders based on health status.~~

~~(3) A health insurer shall provide prior written notice to each of its policyholders annually of the enrollment rights in R590-259-8(1)(b) that includes information as to the enrollment dates and how a dependent eligible for enrollment may apply for coverage with the insurer.~~

**~~R590-259-9. Utah Alternative Mechanism Enrollment.~~**

~~(1) An individual carrier shall only be required to offer coverage to an individual under age 19 if the individual first obtains a certificate of insurability from the Utah Comprehensive Health Insurance Pool pursuant to Subsection 31A-30-108(3) and 31A-30-109(1), in which case, the coverage shall be offered by the carrier:~~

~~(a) on a continuous open enrollment basis; and~~

~~(b) on an underwritten basis without any limitations, pre-existing exclusions or riders based on health status.~~

~~(2) An individual carrier shall not:~~

~~(a) require a health benefit plan offered under the requirements of this section to cover more than one individual;~~

~~(b) deny or unreasonably delay the issuance of a policy; or~~

~~(c) refuse to issue a policy.~~

**R590-259-10. Special Enrollment for Qualifying Events.**

Nothing in this rule shall alter an applicant's ability to obtain health insurance during a special enrollment period, outside of the open enrollment period, resulting from a qualifying event as defined by the Health Insurance Portability and Accountability Act and PPACA.

**R590-259-11. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-259-12. Enforcement Date.**

~~The department will begin enforcing the provisions of this rule immediately.~~

**R590-259-13. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: health insurance open enrollment**

**Date of Enactment or Last Substantive Amendment:** ~~June 27, 2011~~ **2014**

**Authorizing and Implemented or Interpreted Law:** 31A-2-201; 31A-22-605

Natural Resources, Wildlife Resources  
**R657-10**  
 Taking Cougar

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38849

FILED: 09/09/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's cougar program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision: 1) removes reference to "Cougar Management Area" as it pertains to this rule; 2) revises firearms language to include crossbows and to be consistent with other rules; and 3) allows the use of a cougar permit if purchased after the season begins to become valid in three days instead of seven days.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment removes a definition as well as revises firearms language to be consistent with other rules. The addition of three days instead of seven days for the use of a cougar permit can be handled with current staff and programs, therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment only clarifies an already existing stipulation this should have no effect on local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** None--The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that these amendments will not create additional costs for sportsmen wishing to hunt cougar in Utah. Therefore, the rule amendments do not create a cost or savings impact to individuals who participate in hunting cougar.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not create an impact on businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014**

**AUTHORIZED BY:** Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.****R657-10. Taking Cougar.****R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

**R657-10-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value in excess of \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(d) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

~~(e) "Cougar Management Area" means a group of units under the same cougar harvest quota.~~

(f) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(g) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(h) "Green pelt" means the untanned hide or skin of any cougar.

(i) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking cougar.

(j) "Harvest-objective permit" means any permit valid on harvest-objective units, including limited-entry permits for split units after the split-unit transition date.

(k) "Immediate family member" means a livestock owner's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild and grandchild.

(l) "Kitten" means a cougar less than one year of age.

(m) "Kitten with spots" means a cougar that has obvious spots on its sides or its back.

(n) "Limited entry hunt" means any hunt listed in the hunt tables of the guidebook of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(o) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(p) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(q) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(r) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(s) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(t) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

(u) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

**R657-10-3. Permits for Taking Cougar.**

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the guidebook of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(3) Any cougar permit purchased after the season opens is not valid until ~~seven~~ three days after the date of purchase.

(4) To obtain a cougar limited entry permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

**R657-10-4. Permits for Pursuing Cougar.**

(1)(a) To pursue cougar without a limited entry cougar permit, the dog handler must:

(i) obtain a valid cougar pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-10-25(2) to pursue cougar for compensation.

(b) A cougar pursuit permit or exemption ~~therefrom~~ there from does not allow a person to kill a cougar.

(2) Residents and nonresidents may purchase cougar pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

**R657-10-8. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns, crossbows and archery tackle is prohibited within one quarter mile of the above stated areas.

**R657-10-27. Harvest Objective General Information.**

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that [specified Cougar Management Area]unit.

**R657-10-29. Harvest Objective Unit Closures.**

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the [cougar management area]harvest objective unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the [cougar]quota for that harvest objective [for that cougar management area]unit is met and the division closes the [area]unit; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

**KEY: wildlife, cougar, game laws**

**Date of Enactment or Last Substantive Amendment: [~~March 11,~~]2014**

**Notice of Continuation: August 16, 2011**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

**Natural Resources, Wildlife Resources**

**R657-11**

**Taking Furbearers**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38848

FILED: 09/09/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for

taking public input and reviewing the division's furbearer program.

**SUMMARY OF THE RULE OR CHANGE:** The amendment to this rule revises firearms language to include crossbows and to be consistent with other rules; and changes "an animal damage control agent" to the correct title of "Wildlife Service's Agent".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments are technical in nature, therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be done with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment makes technical changes to the rule and does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment makes technical changes to the rule and does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment changes wording for clarification and consistency with other division rules. Therefore, DWR determines that there is no additional compliance costs associated with the amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-11. Taking Furbearers.**

**R657-11-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking furbearers.

**R657-11-13. Methods of Take and Shooting Hours.**

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives[;] ~~and~~ poisons[;] ~~and crossbows~~, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

**R657-11-14. Spotlighting.**

(1) Except as provided in Subsection (3):

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking traps with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) ~~[an animal damage control]~~ a wildlife service's agent acting in his official capacity under a memorandum of agreement with the division.

**R657-11-16. State Parks.**

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows, and archery equipment is prohibited within one quarter mile of the above stated areas.

**KEY: wildlife, furbearers, game laws, wildlife law**

**Date of Enactment or Last substantive Amendment:**  
~~[November 7, 2013]~~ **2014**

**Notice of Continuation: August 16, 2010**

**Authorizing, and Implementing or Interpreted Law: 23-14-18; 23-14-19; 23-13-17**

## Natural Resources, Wildlife Resources

### **R657-69**

### Turkey Depredation

#### NOTICE OF PROPOSED RULE

(New Rule)  
DAR FILE NO.: 38847  
FILED: 09/09/2014

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Pursuant to Sections 23-17-5.1 and 23-17-5.2, this rule provides the procedures for responding to and verifying reports of material damage caused by turkey; the procedures, standards, requirements, and limits for addressing instances of material damage caused by turkeys; and a description of the various hunts that may be held to minimize future instances of material damage caused by turkeys.

**SUMMARY OF THE RULE OR CHANGE:** This rule sets the criteria for which the turkey depredation program will be established and operated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-17-5.1 and Section 23-17-5.2

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This new rule outlines the criteria for the turkey depredation program and establishes the criteria by which it will be administered. The Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This new rule outlines the criteria for the turkey depredation program and establishes the criteria by which it will be administered. Local governments will not be directly or indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since this new rule outlines the criteria for the turkey depredation program and establishes the criteria by which it will be administered and does not incur an additional cost to participate, this filing does not have the potential to create a direct cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since this new rule outlines the criteria for the turkey depredation program and establishes the criteria by which it will be administered and does not incur an additional cost to participate, this filing does not have the potential to create a direct cost or savings impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this new rule will not create a cost or savings

impact to individuals in Utah wishing to participate in the turkey depredation program.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2014

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2014

AUTHORIZED BY: Gregory Sheehan, Director

#### **R657. Natural Resources, Wildlife Resources.**

##### **R657-69 Turkey Depredation.**

##### **R657-69-1. Purpose and Authority.**

(1) Under authority of Section 23-17-5.1, 23-17-5.2, this rule provides:

(a) the procedures for responding to and verifying reports of material damage caused by turkey;

(b) the procedures, standards, requirements, and limits for addressing instances of material damage caused by turkeys; and

(c) a description of the various hunts that may be held to minimize future instances of material damage caused by turkeys.

##### **R657-69-2. Definitions.**

(1) As used in this rule, "turkey" means a wild, free-ranging turkey and does not include a privately-owned wild turkey, domestic turkey, or wild-domestic hybrids.

(2) "Alternate limited entry drawing list" means a chronological list, based upon the permit drawing procedures described in the Upland Game & Turkey Guidebook, of those persons who were unsuccessful in drawing a limited entry turkey hunting permit and would have been successful were additional permits available.

(3) "Control permit" means a nontransferable turkey hunting permit issued by the division under R657-69-6 or R657-69-7 that authorizes the holder to take a turkey for personal use within the described permit boundaries and described dates.

(4) "Control permit voucher" means a document issued to a landowner or lessee that may be retained for personal use or transferred to a third party, and which allows the holder to purchase a turkey control permit from the division.

(5) "Depredation Hunt" means a turkey hunt organized pursuant to R657-69-5, the Wildlife Code, and proclamations of the Wildlife Board.

(6) "Employee" means an individual regularly employed by the landowner or lessee for purposes unassociated with hunting on the private property owned or managed by the landowner or lessee.

(7) "Immediate family member" means the landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, and grandchild.

(8) "Landowner" means any person, partnership, or corporation who owns private property in Utah and whose name appears on a deed as the owner or whose name appears as the purchaser on a contract for sale of private property.

(9) "Lessee" means any person, partnership, or corporation whose name appears as the lessee on a written lease, for at least a one-year period, of private property, and who is in actual physical control of the private property.

(10) "Material damage" means physical impacts to private property caused by turkeys that are visible, persistent, and detrimental to the landowner or lessee's use of the private property.

(11) "Personal property" means any moveable and tangible thing owned by the landowner or lessee.

(12) "Private property" means land in private fee ownership, structures located thereon, and personal property of the landowner or lessee on or adjacent to the land of the landowner or lessee, but not including tribal trust lands.

### **R657-68-3. Responding to Reports of Material Damage by Turkeys.**

(1) Upon discovering material damage to private property attributable to turkeys, a landowner or lessee may request that the division take action to mitigate that damage.

(2) A request for action shall be delivered to a division representative in the appropriate regional office.

(3) A request for action may be made:

(a) orally to expedite a field investigation; or

(b) in writing.

(4)(a) The division will investigate a request for action within 72 hours after receiving the request.

(b) If after completing its investigation the division confirms that material damage did occur and it appears that material damage may continue, the division shall:

(i) remove or drive off turkeys causing material damage; or

(ii) with the written approval of the landowner or lessee, implement a damage mitigation and prevention plan in accordance with R657-69-4.

(5) A landowner or lessee may not harass, hunt, or otherwise take a turkey on private property unless:

(a)(i) they possess a valid turkey hunting permit authorizing them to hunt turkeys; or

(ii) a damage mitigation and prevention plan authorizes them to undertake such actions; and

(b) the landowner or lessee's actions are otherwise consistent with the Wildlife Code, its implementing regulations, and proclamations of the Wildlife Board.

### **R657-69-4. Turkey Damage Mitigation and Prevention Plans.**

(1) A damage mitigation and prevention plan may authorize the division to undertake any or all of the following actions:

(a) provide educational materials regarding turkeys and turkey damage to the landowner or lessee, including strategies on how to alleviate damage;

(b) use, or allow the landowner or lessee to use, nonlethal methods to haze turkeys on private property experiencing material damage and, if necessary, provide the landowner or lessee equipment and supplies necessary to carry out hazing;

(c) exclude turkeys from areas in which material damage has occurred and is expected to continue to occur, using fencing, tarpaulins, or other similar materials;

(d) capture and relocate any turkeys causing, or reasonably likely to cause, material damage to the property to a location on the Wildlife Board approved turkey transplant list;

(e) allow expanded harvest of turkeys by:

(i) increasing permit numbers during limited entry or general season hunts;

(ii) expanding or increasing the areas for turkey hunts;

(iii) enrolling the property in the division's Walk-In Access Program in accordance with R657-56;

(iv) enrolling the property in the division's Cooperative Wildlife Management Unit Program in accordance with R657-37;

(v) schedule and hold a depredation hunt pursuant to R657-69-5;

(vi) issue control permits pursuant to R657-69-6; or

(vii) issue control permit vouchers pursuant to R657-69-7;

(f) allow landowners or lessees to capture and relocate turkeys causing, or reasonably likely to cause, material damage to the property to a location on the Wildlife Board approved turkey transplant list;

(g) allow landowners or lessees to use weapons or methods otherwise prohibited to take a turkey if traditional weapons are unsuitable for the location of the property; and

(h) other reasonable measures aimed at reducing instances of material damage to the private property in question.

(2) Damage mitigation and prevention plans shall have:

(a) a description of the private property covered by the plan;

(b) a specific effective date and effective term for the plan;

(c) a description of the verified instances of material damage and the dates of occurrence; and

(d) an assurance by the landowner or lessee that members of the public holding a control permit or a turkey depredation permit may access the private property at no charge during the hunts for which they hold a permit.

(3) Damage mitigation and prevention plans may be amended or renewed with written consent of the division and the landowner or lessee during their effective term.

(4)(a) The landowner or lessee may unilaterally revoke and withdraw from a damage mitigation and prevention plan by providing the division 30 days prior written notice.

(b) A landowner or lessee's revocation of approval of a damage mitigation and prevention plan eliminates the division's obligations described in the plan.

(c) A landowner or lessee may not revoke approval of a damage mitigation and prevention plan after a depredation hunt has been scheduled on their private property until after the depredation hunt has taken place.

(4) The division may unilaterally revoke and withdraw from a damage mitigation and prevention plan if:

(a) the landowner or lessee fails to exercise reasonable care and diligence to avoid loss or minimize the damage caused by turkeys;

(b) the landowner or lessee fails to comply with the terms of the damage mitigation and prevention plan; or

(c) in the division's discretion, the damage mitigation and prevention plan is not necessary.

(5) The expiration or revocation of a damage mitigation and prevention plan does not preclude the landowner or lessee from making future requests for action.

(6) The division shall not be financially liable for damage to private property caused by:

(a) turkeys;

(b) its efforts to remove or drive off turkeys in response to a request for action; or

(c) actions taken or authorized by a damage mitigation and prevention plan.

(7) A landowner or lessee shall have a copy of the damage prevention and mitigation plan in their possession while undertaking any action authorized in the plan that otherwise violates the Wildlife Code, including, but not limited to, the hazing, capturing, and transplanting of turkeys.

#### **R657-69-5. Depredation Hunts for Turkey.**

(1) Turkey depredation hunts are intended to:

(a) mitigate verified reports of material damage by turkeys and prevent future instances of material damage in the vicinity of the hunt area;

(b) be a focused response to verified reports of material damage;

(c) be a rapid response mechanism to verified reports of material damage; and

(d) have limited permit numbers.

(2) Turkey depredation hunts shall operate consistent with the following guidelines:

(a) turkey depredation hunts may be held August 1 through March 14;

(b) parameters for a turkey depredation hunt must comply with the provisions established in the current Wild Turkey Management Plan approved by the Wildlife Board; and

(c) the boundaries of the hunts, specific season dates, bag limits, sex of birds that may be taken, and allowable weapon types will be further defined in a depredation hunt plan by the division Regional Supervisor.

(3) Hunters will be selected to receive a depredation permit in the following order, based on permit availability:

(a) randomly selected individuals in the depredation hunter pool; and

(b) individuals on the alternate limited entry drawing list, in chronological order.

(4)(a) The turkey hunter depredation pool provides hunters an opportunity to be placed on a wait-list and become

eligible to receive a depredation permit as the availability for depredation permits allows.

(b) Applications for the turkey hunter depredation pool must be submitted pursuant to instructions in the current year's Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey.

(c) Applications must be received by the date published in the Upland Game & Turkey Guidebook of the Wildlife Board for wild turkey.

(d) Applications received after the date published in the proclamation Upland Game & Turkey Guidebook of the Wildlife Board for wild turkey may be used after the list of individuals within the depredation hunter pool and the alternate limited entry drawing list has been exhausted.

(5) If a hunter is successful in the depredation permit drawing and possesses a valid unfilled turkey permit for a hunt in the same calendar year as the depredation hunt, that hunter may receive a depredation permit at no cost.

(6) Hunters selected to receive a depredation permit who do not possess a valid unfilled turkey permit must purchase the appropriate permit prior to participating in the depredation hunt.

(7) Hunters selected to receive a depredation permit will not lose bonus points associated with the limited entry application process.

(8) Hunters with depredation permits for turkey may not possess any other turkey permit for that season, except as otherwise provided in this Rule, Rule R657-54, or by proclamation of the Wildlife Board.

(9) Depredation permits may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or who are otherwise ineligible to receive a permit.

#### **R657-69-6. Control Permits for Turkey.**

(1)(a) As part of a damage mitigation and prevention plan, the division may issue a turkey control permit at no cost directly to the affected landowner or lessee, or to their immediate family member or employee.

(b) No more than two control permits may collectively be issued per calendar year under each damage prevention and mitigation plan.

(2) A control permit allows the permit holder to take a single turkey of either sex within the boundaries designated in the damage mitigation and prevention plan.

(3) Control permit turkey hunts may be held August 1 through March 14.

(4)(a) In the event that the landowner or lessee, or the landowner or lessee's immediate family member or employee, who receives the control permit does not possess a valid hunting or combination license, the division may issue a special turkey control license at no cost to the designated permit holder for the purposes of obtaining a control permit.

(b) A special turkey control license does not authorize the license holder to take any other protected wildlife or to obtain any other permit other than a turkey control permit.

(5) Hunters who receive a control permit will not lose any bonus points accrued as part of the limited entry turkey application process.

(6) Control permits may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or who are otherwise ineligible to receive a permit.

**R657-69-7. Control Permit Vouchers for Turkey.**

(1)(a) As part of the damage mitigation and prevention plan, the division may issue turkey control permit vouchers to the landowner or lessee.

(b) The number of control permit vouchers shall not exceed 10% of the documented turkeys on the private property or fifteen vouchers per calendar year, whichever is less.

(2)(a) Control permit vouchers do not allow turkey hunting and must be redeemed for a control permit prior to going afield.

(b) Control permit vouchers may be redeemed for a turkey control permit at a division office prior to the closing date of the control permit turkey hunt for which the voucher was issued.

(c) Individuals shall pay the required fee in order to redeem a control permit voucher for a turkey control permit.

(3)(a) A landowner or lessee may retain and redeem control permit vouchers as turkey control permits if they have not met their control permit quota identified in R657-69-6(1)(b).

(b) A landowner or lessee transferring control permit vouchers to another individual may not receive any form of compensation or remuneration for the transfer or for allowing access to the private land for turkey hunting under a control permit on the landowner or lessee's private property.

(c) An individual receiving a transferred control permit voucher may only receive one control permit voucher per calendar year.

(4) Individuals redeeming a control permit voucher for a control permit will not lose accrued bonus points for limited entry turkey hunting as a result of redeeming the voucher.

**R657-69-8. Hunt Areas for Depredation and Control Permit Hunts.**

(1) The hunt area for depredation hunts and control permit hunts may include a buffer zone of up to 2 miles around the parcels of private property experiencing material damage.

(2) Buffer zones, if any, will be defined in the damage mitigation and prevention plan.

(3) Buffer zones may partially encompass or be adjacent to lands experiencing material damage.

(4) If a buffer zone includes the private land of multiple landowners, each affected landowner must be a signatory to the damage mitigation and prevention plan.

**R657-69-9. Appeal Procedures.**

(1) Upon the petition of an aggrieved party to a final division action relative to material damage caused by turkeys and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

**R657-69-10. Hunting or Combination License Required.**

(1)(a) A person must possess or obtain a valid Utah hunting or combination license, or a special turkey control license, to receive a turkey control permit pursuant to R657-69-6.

(b) A person must possess or obtain a valid Utah hunting or combination license to:

(i) receive a turkey depredation permit; or

(ii) or redeem a control permit voucher for the corresponding permit.

(2)(a) Special turkey control licenses are only issued to landowners or lessees, immediate family members, and employees that are designated to receive a turkey control permit under R657-69-6 and do not possess a valid Utah hunting or combination license.

(b) Special turkey control licenses may not be used in lieu of a hunting or combination license to obtain a depredation permit or a control permit under a control permit voucher.

**KEY: wildlife, turkey, depredation**

**Date of Enactment or Last Substantive Amendment: 2014**

**Authorizing, and Implemented or Interpreted Law: 23-17-5.1; 23-17-5.2**

**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 <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Agriculture and Food, Marketing and Development **R65-1** Utah Apple Marketing Order

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 38843  
FILED: 09/08/2014

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under authority of Subsection 4-2-2(1)(e), the Commissioner of Agriculture and Food can authorize marketing orders to promote orderly market conditions for agricultural products. After a study of information available and by request of the industry that it was in the public interest to have a marketing order for the apple industry, the Utah Apple Marketing Order was established more than 30 years ago.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received supporting or opposing 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 Apple Marketing Board representing Utah producers has requested that the order be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
AGRICULTURE AND FOOD  
MARKETING AND DEVELOPMENT  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jed Christenson by phone at 801-538-7108, by FAX at 801-538-7126, or by Internet E-mail at [jedchristenson@utah.gov](mailto:jedchristenson@utah.gov)  
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)  
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [sericson@utah.gov](mailto:sericson@utah.gov)

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 09/08/2014

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## Agriculture and Food, Marketing and Development **R65-3** Utah Turkey Marketing Order

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 38844  
FILED: 09/08/2014

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under authority of Subsection 4-2-2(1)(e), the Commissioner of Agriculture and Food can authorize marketing orders to promote orderly market conditions for agricultural products. By request of the industry and a study of the potential resulting benefits, the Utah Turkey Marketing Order was established many years ago.

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 not been any written comments received opposing or supporting this rule in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Turkey Marketing Board has requested that the marketing order be continued for the benefit of the industry.

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

AGRICULTURE AND FOOD  
MARKETING AND DEVELOPMENT  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jed Christenson by phone at 801-538-7108, by FAX at 801-538-7126, or by Internet E-mail at jedchristenson@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 09/08/2014

**Agriculture and Food, Marketing and  
Development  
R65-4  
Utah Egg Marketing Order**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38845  
FILED: 09/08/2014

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under authority of Subsection 4-2-2(1)(e), the Commissioner of Agriculture and Food can authorize marketing orders to promote orderly market conditions for agricultural products. The Utah Egg Marketing Order was originally established at the request of the industry and upon study of the potential benefits.

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 not been any written comments received opposing or supporting 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: As the industry has consolidated into fewer and larger producers, the Egg Marketing Board became inactive and the industry indicated that there was not currently a need for this rule. Nonetheless, it would seem prudent to continue the Utah Egg Marketing Order for another five years to determine if there may be a need for it again in the future. There is a thriving business of very small backyard egg producers that may see the need to use this order at a future date. If the order is terminated and producers desire to have a marketing order in the future, it would require a new referendum and producer vote. Therefore, it is recommended that this rule be continued for another five years in an inactive state.

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

AGRICULTURE AND FOOD  
MARKETING AND DEVELOPMENT  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jed Christenson by phone at 801-538-7108, by FAX at 801-538-7126, or by Internet E-mail at jedchristenson@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 09/08/2014

**Agriculture and Food, Regulatory  
Services  
R70-960**

**Weights and Measures Fee  
Registration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38846  
FILED: 09/08/2014

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-9-15 -- Registration of commercial establishments using weights and measures inspectors, Application, Fee, expiration, Renewal. The department shall establish rules for the registration of weights and measures users and issue of certification of weights and measures devices to ensure the use of correct weights and measures in commerce or trade.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing 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: As a regulatory agency, there is still a need to know the weighing and measuring devices in Utah and know where they are located. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD  
REGULATORY SERVICES  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Brett Gurney by phone at 801-538-7158, by FAX at 801-538-7126, or by Internet E-mail at [bgurney@utah.gov](mailto:bgurney@utah.gov)
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [sericson@utah.gov](mailto:sericson@utah.gov)
- ◆ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at [twaller@utah.gov](mailto:twaller@utah.gov)

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 09/08/2014

**Education, Administration  
R277-471**

**Oversight of School Inspections**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38854  
FILED: 09/09/2014

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 53A-20-104 and 53A-20-104.5 direct the superintendent to enforce requirements and provisions about public school building and alteration, verify inspections of school buildings, and provide information annually to local education agencies (LEAs) about the construction and inspection of public school buildings; and Subsection 53A-1-401(3) permits the Utah State Board of Education 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 comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides specific provisions for the oversight of permanent or temporary public school construction/renovation and inspections.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at [carol.lear@schools.utah.gov](mailto:carol.lear@schools.utah.gov)

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 09/09/2014

EFFECTIVE: 09/09/2014

**Education, Rehabilitation  
R280-203  
Certification Requirements for  
Interpreters for the Hearing Impaired**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 38853  
FILED: 09/09/2014**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-26a-202(2) directs the Utah State Board of Education (Board) to prescribe certification qualifications and prescribe rules governing applications for certification; Section 53A-24-103 places the Utah State Office of Rehabilitation (USOR) under the policy direction of the Board; and Subsection 53A-1-401(3) authorizes 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 comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides certification requirements and disciplinary procedures for interpreters for the hearing impaired.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

**Health, Family Health and  
Preparedness, Children with Special  
Health Care Needs  
R398-1  
Newborn Screening**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 38839  
FILED: 09/04/2014**

**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 establishes the requirements for screening newborns born in Utah under the statutory authority of the Utah Department of Health (UDOH), Title 26, to prevent intellectual or physical disability or death by early identification and treatment of specified heritable disorders. This statute authorizes UDOH to charge fees to cover the costs of testing infants and following up with parents of the tested infants. Section 26-1-6, Subsections 26-1-30(2)(a), (b), (c), (d), and (g); and Section 26-10-6 authorize this 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 comments have been received by the Newborn Screening Program since the last notice of continuation, 09/10/2009.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Newborn Screening rule is necessary to assure the proper testing and follow up of every newborn in Utah. This rule establishes definitions, required tests, testing procedures, responsibilities, timing and follow-up procedures. For these reasons Rule R398-1 was established and must be continued.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,

CHILDREN WITH SPECIAL HEALTH CARE NEEDS  
44 N MARIO CAPECCHI DR  
SALT LAKE CITY, UT 84113  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Kim Hart by phone at 801-584-8256, by FAX at 801-536-0966, or by Internet E-mail at kimhart@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 09/04/2014

**Human Services, Recovery Services  
R527-40  
Retained Support**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38836  
FILED: 09/03/2014

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-1-111 gives the Department of Human Services (DHS) and Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Under Section 62A-11-307.1, an obligee whose rights have been assigned must immediately deliver payments received by the obligor directly to ORS. If an obligee fails to follow these procedures, ORS may recover the assigned support that has been inappropriately retained by the obligee pursuant to Section 62A-11-307.2. This rule was adopted to provide a clear definition of "retained support" and to explain when the \$50 pass-through payment would be appropriate for credit on support payments that were retained by the obligee. Section 62A-11-304.1 authorizes ORS to direct an obligor or other payor to change the payee of support to ORS if there has been an assignment of rights, upon providing notice to the obligor and obligee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the laws

and policies dealing with retained support are still in effect and the rule gives essential clarification, procedures and explanation relating to the laws and policies. Recovery of assigned support is essential to reimburse the state for funds spent on the family.

**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 Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Andrew Clement by phone at 801-741-7434, by FAX at 801-536-8509, or by Internet E-mail at aclement@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 09/03/2014

**Transportation, Operations,  
Construction  
R916-5  
Health reform -- Health Insurance  
Coverage in State Contracts --  
Implementation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38861  
FILED: 09/12/2014

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 72-6-107.5(6) requires the Utah Department of Transportation (UDOT) to adopt administrative rules setting out: 1) requirements and procedure for a contractor to demonstrate to UDOT compliance with the statutory requirement of offering health care insurance coverage for contractor employees; 2) penalties that may be imposed for violation of the section; and 3) a website with the benchmark for qualified health insurance coverage.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides contractors with the means of compliance with this ongoing statutory requirement and enables the provision to be enforced with contractors and consultants. Therefore, this rule should be continued. Rule R916-5 is in need of updating and some rewriting, so UDOT anticipates that it will seek amendments to the rule in the near future.

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

TRANSPORTATION  
OPERATIONS, CONSTRUCTION  
CALVIN L RAMPTON COMPLEX

4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division 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 [cnewman@utah.gov](mailto:cnewman@utah.gov)

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 09/12/2014

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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 Division 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

### Administrative Services

Records Committee  
No. 38640 (AMD): R35-1. State Records Committee Appeal Hearing Procedures  
Published: 07/15/2014  
Effective: 09/09/2014

No. 38641 (AMD): R35-1a. State Records Committee Definitions  
Published: 07/15/2014  
Effective: 09/09/2014

No. 38642 (AMD): R35-2. Declining Appeal Hearings  
Published: 07/15/2014  
Effective: 09/16/2014

No. 38647 (REP): R35-3. Prehearing Conferences  
Published: 07/15/2014  
Effective: 09/16/2014

No. 38643 (AMD): R35-4. Compliance with State Records Committee Decisions and Orders  
Published: 07/15/2014  
Effective: 09/16/2014

No. 38645 (AMD): R35-5. Subpoenas Issued by the State Records Committee  
Published: 07/15/2014  
Effective: 09/16/2014

No. 38646 (AMD): R35-6. Expedited Hearing  
Published: 07/15/2014  
Effective: 09/16/2014

### Environmental Quality

Air Quality  
No. 38583 (AMD): R307-342-3. Exemptions  
Published: 07/01/2014  
Effective: 09/04/2014

### Governor

Economic Development  
No. 38702 (R&R): R357-7. Utah Capital Investment Board  
Published: 08/01/2014  
Effective: 09/11/2014

### Health

Disease Control and Prevention, Environmental Services  
No. 38656 (NEW): R392-104. Feeding Disadvantaged Groups  
Published: 07/15/2014  
Effective: 09/12/2014

### Insurance

Administration  
No. 38534 (NEW): R590-270. Risk Adjustment Data Submission Requirements  
Published: 06/01/2014  
Effective: 09/22/2014

### Technology Services

Administration  
No. 38470 (AMD): R895-7. Acceptable Use of Information Technology Resources  
Published: 05/15/2014  
Effective: 09/11/2014



**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, 2014 through September 15, 2014. 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 Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.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
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<u>Administration</u>					
R13-2	Access to Records	38570	5YR	06/02/2014	2014-12/53
R13-2	Access to Records	38569	AMD	07/22/2014	2014-12/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	38547	5YR	05/21/2014	2014-12/53
<u>Debt Collection</u>					
R21-2	Office of State Debt Collection Administrative Procedures	38497	NSC	05/29/2014	Not Printed
R21-3	Debt Collection Through Administrative Offset	38496	NSC	05/29/2014	Not Printed
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-19	Facility Use Rules	38617	AMD	08/07/2014	2014-13/8
R23-22	General Procedures for Acquisition and Selling of Real Property	38618	R&R	08/07/2014	2014-13/13
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38587	5YR	06/10/2014	2014-13/133
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38615	AMD	08/07/2014	2014-13/18
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38425	R&R	06/09/2014	2014-9/4
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
R25-7	Travel-Related Reimbursements for State Employees	38471	AMD	06/23/2014	2014-10/4
R25-10	State Entities' Posting of Financial Information to the Utah Public Notice Website	38653	5YR	06/25/2014	2014-14/79
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	38634	NEW	08/21/2014	2014-14/4
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R27-4-13	Disposal of State Vehicles	38312	AMD	04/22/2014	2014-6/4
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
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R33-1	Utah Procurement Rules, "General Procurement Provisions," Definitions	38689	5YR	07/08/2014	2014-15/61
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R33-2	Rules of Procedure for Procurement Policy Board	38690	5YR	07/08/2014	2014-15/61
R33-3	Source Selection and Contract Formation	38502	R&R	07/08/2014	2014-11/9
R33-3	Procurement Organization	38691	5YR	07/08/2014	2014-15/62
R33-4	Specifications	38503	R&R	07/08/2014	2014-11/28
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	38692	5YR	07/08/2014	2014-15/62
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R33-5	Request for Information	38693	5YR	07/08/2014	2014-15/63
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R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38446	5YR	04/17/2014	2014-10/111
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38505	R&R	07/08/2014	2014-11/43
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R33-10	Preferences	38698	5YR	07/08/2014	2014-15/66
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R33-15	Architect-Engineer Services	38513	NEW	07/08/2014	2014-11/84
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R33-17	Procurement Appeals Board	38515	NEW	07/08/2014	2014-11/87
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R33-19	General Provisions Related to Protest or Appeal	38518	NEW	07/08/2014	2014-11/90
R33-20	Records	38519	NEW	07/08/2014	2014-11/91
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R33-24	Unlawful Conduct	38521	NEW	07/08/2014	2014-11/95
R33-25	Executive Branch Insurance Procurement	38522	NEW	07/08/2014	2014-11/97
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R35-1	State Records Committee Appeal Hearing Procedures	38640	AMD	09/09/2014	2014-14/5
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R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	CPR	05/08/2014	2014-7/82

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R65-3	Utah Turkey Marketing Order	38844	5YR	09/08/2014	Not Printed
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R70-310	Grade A Pasteurized Milk	38636	EXT	06/18/2014	2014-14/87
R70-310	Grade A Pasteurized Milk	38651	5YR	06/24/2014	2014-14/79
R70-310	Grade A Pasteurized Milk	38652	NSC	07/11/2014	Not Printed
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R81-10b	Temporary Beer Event Permits	38276	AMD	03/25/2014	2014-4/14

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R105-2	Records Access and Management	38749	NSC	08/28/2014	Not Printed

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R131-4	Capitol Preservation Board General Procurement Rule	38557	AMD	07/22/2014	2014-12/8
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R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-15	Health Facility Administrator Act Rule	38337	AMD	05/08/2014	2014-7/5
R156-15A-231	Administration of Building Code Training Fund and Factory Built Housing Fees Account	38549	AMD	07/22/2014	2014-12/10
R156-17b	Pharmacy Practice Act Rule	38638	AMD	08/21/2014	2014-14/21
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R156-24b	Physical Therapy Practice Act Rule	38473	AMD	06/23/2014	2014-10/9
R156-24b-505	Trigger Point Dry Needling - Education and Experience Required - Registration	38657	AMD	08/21/2014	2014-14/41
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R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
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R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
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R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-55a-301	License Classifications - Scope of Practice	38380	NSC	04/14/2014	Not Printed
R156-55b	Electricians Licensing Act Rule	38648	AMD	08/21/2014	2014-14/44
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R277-116	Utah State Board of Education Internal Audit Procedure	38183	AMD	02/07/2014	2014-1/10
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R277-463	Class Size Average and Pupil-Teacher Ratio Reporting	38622	AMD	08/07/2014	2014-13/24

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R277-472	Charter School Student Enrollment and Transfers and School District Capacity Information	38624	AMD	08/07/2014	2014-13/28
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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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	38749	R105-2	NSC	08/28/2014	Not Printed
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	37833	R307-401-19	AMD	01/06/2014	2013-15/29
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	38105	R307-214-3	AMD	03/06/2014	2013-23/18
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	38334	R315-8-14	NSC	04/01/2014	Not Printed
	38335	R315-12	NSC	04/01/2014	Not Printed
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	38519	R33-20	NEW	07/08/2014	2014-11/91	
	38521	R33-24	NEW	07/08/2014	2014-11/95	
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	38690	R33-2	5YR	07/08/2014	2014-15/61	
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	38699	R33-11	5YR	07/08/2014	2014-15/66	
	38523	R33-26	NEW	07/08/2014	2014-11/98	

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Administrative Services, Purchasing and General Services	38521	R33-24	NEW	07/08/2014	2014-11/95	
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	38241	R277-518	AMD	03/10/2014	2014-3/8	
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Commerce, Occupational and Professional Licensing	38279	R156-22	AMD	04/08/2014	2014-5/7	
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	38356	R277-486	NSC	04/01/2014	Not Printed	
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Commerce, Occupational and Professional Licensing	38279	R156-22	AMD	04/08/2014	2014-5/7	
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	38129	R414-306-5	AMD	01/10/2014	2013-23/35	
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Agriculture and Food, Marketing and Development	38843	R65-1	5YR	09/08/2014	Not Printed	
	38844	R65-3	5YR	09/08/2014	Not Printed	
	38845	R65-4	5YR	09/08/2014	Not Printed	
	38287	R65-12	NEW	04/16/2014	2014-5/5	
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	38516	R33-18	NEW	07/08/2014	2014-11/89	
	38518	R33-19	NEW	07/08/2014	2014-11/90	
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	38617	R23-19	AMD	08/07/2014	2014-13/8	
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	38557	R131-4	AMD	07/22/2014	2014-12/8	
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	38432	R277-105	AMD	06/09/2014	2014-9/8	
	38185	R277-437	AMD	02/07/2014	2014-1/12	
	38347	R277-438	5YR	03/14/2014	2014-7/89	
	38591	R277-462	5YR	06/10/2014	2014-13/137	
	38621	R277-462	AMD	08/07/2014	2014-13/20	
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	38360	R277-735	AMD	05/08/2014	2014-7/11	
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	38749	R105-2	NSC	08/28/2014	Not Printed	
Environmental Quality, Administration	38244	R305-1	NSC	01/30/2014	Not Printed	
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	38590	R277-463	5YR	06/10/2014	2014-13/138	
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	38520	R33-21	NEW	07/08/2014	2014-11/92	
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