

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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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.

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: 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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## 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 February 02, 2016, 12:00 a.m., and February 16, 2016, 11:59 p.m. are included in this, the March 01, 2016, 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 Rules being repealed are completely struck out.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 March 31, 2016. 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 June 29, 2016, 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**

**Commerce, Securities**  
**R164-15-3**  
**Notice Filings for Offerings Made Under**  
**Tier 2 of Federal Regulation A**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 40206  
 FILED: 02/09/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the federal "Jumpstart Our Business Startups Act" of 2012 (JOBS Act), Congress directed the Securities and Exchange Commission (Commission) to make substantial modifications to the rules governing "Regulation A of the Securities Act" of 1933. The final rules promulgated by the Commission (see 17 CFR 230.251 through 230.263) permitted state securities regulators to require the filing of notice when sales were made to residents of the state under Tier 2 of Regulation A. This rule effectuates the creation of such filings.

**SUMMARY OF THE RULE OR CHANGE:** Pursuant to the authority granted to the Utah Division of Securities by Subsection 61-1-15.5(3), the Division adds this section to effectuate the receiving of notice filings for securities offerings made to residents of this state pursuant to Tier 2 of Federal Regulation A of the "Securities Act" of 1933. This section establishes the filing requirement and enumerates the required documents and fees that constitute a complete filing.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 17 CFR 230.251 through 230.263 and Subsection 61-1-15.5(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The state will incur no additional costs to its budget. Each filing will be accompanied by a filing fee of either \$100 or \$500. The Division anticipates that additional revenue from these fees will not exceed \$10,000 to \$15,000 during the first full fiscal year of receipt. Currently, the Division anticipates it can process the filings with existing personnel resources.

◆ **LOCAL GOVERNMENTS:** Local governments will not receive or process these filings.

◆ **SMALL BUSINESSES:** Small businesses will be required to pay a filing fee of either \$100 or \$500. However, since Tier 2 securities offerings under Regulation A+ are specifically designed for larger offerings of \$20,000,000 or more, the overall cost effect on the offering as a whole will be minimal.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Larger entities contemplating the use of Tier 2 of Regulation A

for the offering of their securities will pay filing fees identical to those for "small businesses" above.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs for affected persons will be the payment of a filing fee of \$100 for filings made within the deadline period specified in the rule and \$500 for filings made after the expiration of the deadline.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department anticipates that Tier 2 of Regulation A will provide Utah businesses with a cost-effective, streamlined process for making public offerings of securities and raising working capital for expansion. At the same time, the Division wishes to discharge its duty to protect investors by obtaining key information about the offering, the issuing company, and those who manage its operations. The notice filings contemplated under this Rule will provide this information at a minimal regulatory cost to business. As required by law, the Securities Commission has reviewed the proposed rule and has approved it by a unanimous vote.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/11/2016**

**AUTHORIZED BY: Keith Woodwell, Director**

**R164. Commerce, Securities.**

**R164-15. Federal Covered Securities.**

**R164-15-3. Notice Filings for Offerings Made Under Tier 2 of Federal Regulation A.**

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5(3) and 61-1-24.

(2) The rule requires a notice filing within 15 days after the first sale in this state of securities described in Subsection 61-1-15.5(3) and sets forth the filing procedure.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

(3) "EFD" means the Electronic Filing Depository established and maintained by NASAA.

(C) Filing Requirements:

(1) An issuer offering a security that is a covered security under section 18(b)(3) of the Securities Act of 1933 must file with the Division or its designee, no later than 15 days after the first sale of such federal covered security in this state, an initial notice and a filing fee as follows:

(1)(a) A completed Uniform Notice of Regulation A -- Tier 2 Offering notice filing form or copies of all documents filed with the Securities and Exchange Commission;

(1)(b) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Regulation A -- Tier 2 Offering notice filing form;

(1)(c) The forms referenced in (3)(a)(i) and (ii) above shall be manually signed by a person duly authorized by the issuer;

(1)(d) The issuer shall include with the initial notice a statement indicating:

(1)(d)(i) The date of the first sale of securities in the state of Utah; or

(1)(d)(ii) That sales have yet to occur in the state of Utah; and

(1)(e) The issuer shall submit a fee as specified in the Division's fee schedule.

(2) An issuer may file an amendment to a previously filed notice filing at any time and must file such an amendment to correct a material mistake of fact or error in the previously filed notice of sales as soon as practicable after discovery of the mistake or error.

(3) An issuer that files an amendment to a previously filed notice filing must provide current information in response to all requirements of the notice filing form regardless of why the amendment is filed.

(D) Designation of EFD for Electronic Filings

(1) At such time as the EFD system is operationally configured to receive such filings, the Division hereby designates EFD to receive and store notice filings made on Uniform Notice of Regulation A -- Tier 2 Offering and to collect related filing fees on behalf of the Division.

(2) The filing of notice filings made on Uniform Notice of Regulation A -- Tier 2 Offering and the collection of related processing fees through the EFD system is permissive and shall not be required until the Division shall amend this Rule to designate a specific date of mandatory compliance. The public notice designated for Form D filings in Section R164-15-2(C)(3) shall not constitute such an amendment.

(3) Any documents or fees required to be filed with the Division that are not permitted to be filed with, or cannot be accepted by, EFD shall be filed directly with the Division.

(4) A duly authorized person of the issuer shall affix his or her electronic signature to the notice filing on Uniform Notice of Regulation A -- Tier 2 Offering by typing his or her name in the appropriate fields and submitting the filing to EFD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing both for purposes of authorizing the disclosures in the Form as well as giving effect to any consent to service provisions found therein.

(5) Subsequent to the amendment of this Rule referenced in paragraph (D)(2) above, no filing, partial filing, or filing fee submitted to the Division by means other than EFD shall act to grant such a filing the status of being duly received by the Division for any purpose relating to the timeliness of the filing or the avoidance of the assessment of any late filing fee.

**KEY: mutual funds, securities, securities regulation**

**Date of Enactment or Last Substantive Amendment: [~~March 10, 2015~~2016]**

**Notice of Continuation: July 25, 2012**

**Authorizing, and Implemented or Interpreted Law: 61-1-15.5; 61-1-24**

Education, Administration  
**R277-716**  
Alternative Language Services for Utah  
Students

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 40212

FILED: 02/16/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-716 is amended to provide technical and conforming changes in compliance with the "Utah Administrative Rulewriting Manual".

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-716 provide technical and conforming changes throughout the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments to Rule R277-716 provide technical and conforming changes throughout the rule which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-716 provide technical and conforming changes throughout the rule which likely will not result in a cost or savings to local governments.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-716 provide technical and conforming changes throughout the rule 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 R277-716 provide technical and

conforming changes throughout the rule which likely will not result in a cost or savings persons other than other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-716 provide technical and conforming changes throughout the rule 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: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to the rule.

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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2016

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

## R277. Education Administration.

### R277-716. Alternative Language Services for Utah Students.

#### R277-716-~~2~~1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~ by:

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board[- by];~~

~~(b) [No Child Left Behind-]Title III[-Language Instruction for Limited English Proficient and Immigrant Students-]; and~~

~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~[B-]~~(2) The purpose[s] of this rule ~~[are]~~is:

~~(1)a) to address the requirements of Title [V]III and implementing regulations and case law;~~

~~(2)b) to clearly define the respective responsibilities of the [Board]Superintendent and [local boards of education]LEAs:~~

~~(a)i) in identifying ELL/LEP students who are currently enrolled in Utah schools; and~~

~~(b)ii) in providing consistent and appropriate services to identified students; and~~

~~(3)c) in order to;~~

~~(i) meet [NCLB]Title III requirements[-];~~

~~(ii) [to-]meet [NCLB-]funding eligibility requirements; and~~

~~(iii) [to-]appropriately distribute ELL/LEP funds to [school districts/charter schools]LEAs with adequate policies.~~

#### R277-716-~~1~~2. Definitions.

~~[A-]~~(1) "Alternative language services program" or "ALS program" means a research-based language acquisition instructional service model used to achieve English proficiency and academic progress of identified students.

~~[B-]~~(2) "Alternative language services" or ~~[("ALS")]~~" means language services designed to meet the education needs of all language minority students so that students are able to participate effectively in the regular instruction program.

~~[C-]~~(3) "Annual measurable achievement objectives" or ~~[("AMAOs")]~~" means English Language Proficiency Performance Targets established by the ~~[USOE]Superintendent~~ consistent with ~~[NCLB-]Title III requirements for public school students who are receiving language acquisition services in the state of Utah as required by [Title III, Section 3122]20 U.S.C. 6842.~~

~~[D-]~~(4) "Approved language acquisition instructional services model" means methods of ALS instruction that are evidence-based and recommended by the U.S. Department of Education and the ~~[USOE]Superintendent.~~

~~[E- "Board" means the Utah State Board of Education-]~~

~~[F-]~~(5) "Consolidated Utah Student Achievement Plan" means the application for federal funds authorized under ESEA, and other federal sources submitted annually to the ~~[Utah State Office of Education]Superintendent.~~

~~[G-]~~(6) "English Language Learner/Limited English Proficient" or ~~[("ELL/LEP")]~~" means an individual:

~~(1)a) who has sufficient difficulty speaking, reading, [and] writing, or understanding the English language, and whose difficulties may deny [such]the individual the opportunity to;~~

~~(i) learn successfully in classrooms where the language of instruction is English; or~~

~~(ii) [which may deny the individual the opportunity to-] participate fully in society;[- or]~~

~~(2)b) who was not born in the United States or whose native language is a language other than English and who comes from an environment where a language other than English is dominant; or~~

~~(3)c) who is an American Indian or Alaskan native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency.~~

~~[H- "IEP" means Individualized Education Program for eligible students with disabilities under the Individuals with Disabilities Education Act of 2004.~~

~~[I-]~~(7) "Immigrant children and youth" for purposes of this rule means individuals who:

~~(1)a) are ages 3 through 21;~~

~~(2)b) were born outside of the United States; and~~

~~(3)c) have not been attending one or more schools in any one or more states of the United States for more than [3]three full academic years.~~

~~[J-]~~(8) "Instructional Materials Commission" means a Commission appointed by the Board to evaluate instructional



materials for recommendation by the Board consistent with ~~[Section 53A-14-104]~~ Title 53A, Chapter 14, State Instructional Materials Commission.

~~[K-](9)~~ "Language acquisition instructional program" means an instructional program for students for the purpose of developing and attaining English proficiency, while meeting state academic content and achievement standards.

~~[L- "Mountain West Consortium" means a committee consisting of 10 Western state education agencies formed to develop a multi-state English proficiency test.]~~

~~[M-](10)~~ "State Approved Endorsement Program" or ~~[("SAEP")]~~ means a professional development plan on which a licensed Utah educator is working to obtain an endorsement.

~~[N- "USOE" means the Utah State Office of Education.]~~

(11) "Title III" means federal provisions for providing language instruction to ELL/LEP students under 20 U.S.C. 6801, et seq.

### **~~R277-716-3. [State Board of Education] Superintendent Responsibilities.~~**

~~[A-](1)~~ The ~~[Board]~~ Superintendent shall make available an identification and placement procedure model to ~~[local school boards]~~ LEAs to provide language acquisition services for ~~[LEP/]~~ ELL/LEP students.

~~[B-](2)~~ The ~~[Board]~~ Superintendent shall develop and require all ~~[school districts/charter schools]~~ LEAs to use the statewide annual assessment based on the AMAOs for English language acquisition to measure growth and progress in:

- ~~(a)~~ listening[;];
- ~~(b)~~ speaking[;];
- ~~(c)~~ reading[~~-and~~];
- ~~(d)~~ writing; and
- ~~(e)~~ comprehension ~~[based on the Title III AMAOs for English language acquisition].~~

~~(3) [For the 2005-2006 school year, t]The Utah Academic Language Proficiency Assessment (UALPA) shall be administered [between January 1 and May 1, 2006. Each year thereafter, the testing window shall be open] throughout the school year.~~

~~(4) [School districts]An LEA~~ may determine restricted testing dates within the school year.

~~[C-](5)~~ The ~~[Board]~~ Superintendent shall apply a formula and distribute funds to ~~[local boards]~~ LEAs for identification and services to ELL/LEP students and their families.

~~(1)a~~ The formula shall provide an amount based upon eligible students and available funds, to be distributed to all eligible ~~[school districts/charter schools]~~ LEAs and consortia consistent with Title III requirements.

~~(2)b~~ The formula shall provide for an additional amount to qualifying ~~[school districts/charter schools]~~ LEAs based on numbers of immigrant children and youth.

~~[D-](6)~~ The ~~[Board]~~ Superintendent shall make ~~[available to school districts/charter schools]~~ models and accountability measures in providing ALS services to students ~~[School districts/charter schools] available to LEAs.~~

(7) An LEA shall use [Board]Superintendent-identified models or models based upon educational research.

~~[E-](8) [The Board shall require school districts/charter schools]An LEA~~ that receives ~~[NCLB]~~ Title III funds under this rule ~~[to]shall provide the following to the Superintendent:~~

~~(1)a~~ ~~[provide-]~~ a budget as part of the Consolidated Utah Student Achievement Plan data on student achievement;

~~(2)b~~ ~~[provide-]~~ the number of students served with Title III funds;

~~(3)c~~ ~~[provide-]~~ assurances and documentation maintained of services or a program used to serve students ~~[school districts/charter schools shall maintain documentation of services or program];~~

~~(4)d~~ ~~[provide-]~~ assurances and documentation maintained of required parent notification ~~[school districts/charter schools shall maintain documentation of parent notification]; and~~

~~(5)e~~ ~~[provide in-]~~ a biennial report ~~[a] summar[y]izing [of] the [school districts/charter schools]LEA's progress [under]in Subsection [R277-716-3G](10) [over a two-year period] in addition to the annual Consolidated Utah Student Achievement Plan information.~~

~~[F-](9)~~ The ~~[Board]~~ Superintendent shall provide timelines to ~~[school districts]~~ LEAs for meeting Title III requirements.

~~[G-](10)~~ The ~~[Board]~~ Superintendent shall assist and provide training to ~~[school districts/charter schools]~~ LEAs in development of ALS and Title III services to students who do not meet prescribed English proficiency AMAOs.

~~[H-](11) [Monitoring: the USOE shall remind school districts/charter schools annually in November that school districts/charter schools]An LEA~~ shall maintain:

- ~~(1)a~~ an ALS budget plan;
- ~~(2)b~~ a plan for delivering student instruction;
- ~~(3)c~~ ALS assessments to date;
- ~~(4)d~~ a sample of parent notification required under Subsection R277-716-4[F](7); and
- ~~(5)e~~ documentation or evidence of progress of required Title III AMAOs.

~~[I-](12) [USOE staff]The Superintendent~~ shall ~~[make]conduct on-site [visits to]audits of all funded ALS programs [within every five-year period beginning with 2006]at least once every five years.~~

~~[J-](13) [USOE staff]The Superintendent~~ shall provide technical assistance during on-site ~~[visits]audits~~ and as the ~~[USOE]Superintendent~~ deems necessary.

### **~~R277-716-4. [Local Board of Education]LEA Responsibilities.~~**

~~[A-](1) An [local board of education]LEA~~ that receives funds under Title III ~~[of NCLB]~~ shall assure as part of the Consolidated Utah Student Achievement Plan that the ~~[local board]LEA~~ has a written plan that:

~~(1)a~~ includes an ELL/LEP student find process, including a home language survey and a language proficiency for program placement, that is implemented with student registration;

~~(2)b~~ uses a valid and reliable assessment of an ELL/LEP student's English proficiency in:

- ~~(i)~~ listening[;];
- ~~(ii)~~ speaking[;];
- ~~(iii)~~ reading[;];
- ~~(iv)~~ writing[;]; and

~~\_\_\_\_\_~~ (v) comprehension ~~[of English of identified ELL/LEP students];~~

(3)c provides language acquisition instructional services based on ~~[the]Board-approved~~ Utah English Language Proficiency Standards ~~[approved by the Board on September 1, 2005];~~

(4)d establishes student exit criteria from ALS programs or services; ~~and~~

(5)e includes the ELL/LEP student count, by classification, prior to July 1 of each year.

~~[B:]~~(2) Following ~~[funding, a school district/charter school]receipt of Title III funds, an LEA shall:~~

(1)a determine what type of Title III ALS services are available and appropriate for each student identified in need of ALS services ~~[Examples include], including:~~

(i) dual immersion~~[-];~~

(ii) ESL content-based~~[-or]; and~~

(iii) sheltered instruction;

(2)b implement an approved language acquisition instructional program designed to achieve English proficiency and academic progress of an identified student[s];

(3)c ensure that all identified ELL/LEP students receive English language ~~[development]~~ instructional services, consistent with ~~[R277-716-4A(3)]Subsection (1)(c);~~

(4)d provide adequate staff development to assist an ELL/LEP teacher[s] and staff in meeting AMAOs; ~~and~~

(5)e provide necessary staff~~[-]; with:~~

(i) curricular materials approved by the Instructional Materials Commission consistent with Rule R277-469~~[-]; and~~

(ii) facilities for adequate and effective training~~[-];~~

~~[C:]~~(3) If ~~[school districts/charter schools do]~~ an LEA does not meet AMAOs, the~~[y]~~ LEA shall develop and implement improvement plans to satisfy AMAOs.

~~[D:]~~(4) Following evaluation of student achievement and services, an ~~[school district/charter school]~~ LEA shall:

(1)a analyze results and determine the program's~~[-]~~ success or failure; and

(2)b modify a program or services that are not effective in meeting the state AMAOs.

~~[E:]~~(5) An ~~[school district/charter school]~~ LEA shall have a policy to identify and serve students who qualify for services under IDEA, including:

(1)a implementing procedures and training, consistent with federal regulations and state special education rules, that ensure ELL/LEP students are not misidentified as students with disabilities due to their inability to speak and understand English;

(2)b reviewing the assessment results of a student's~~[-]~~ language proficiency in English and other language prior to initiating evaluation activities, including selecting additional assessment tools;

(3)c conducting assessments for IDEA eligibility determination and educational programming in a student's~~[-]~~ native language when appropriate;

(4)d using nonverbal assessment tools when appropriate;

(5)e ensuring that accurate information regarding a student's~~[-]~~ language proficiency in English and another language~~[-]~~ is considered in evaluating assessment results;

(6)f considering results from assessments administered both in English and in ~~[the]a~~ student's~~[-]~~ native language; ~~[and]~~

(7)g ensuring that all required written notices and communications with a parent[s] who ~~[are]~~ is not proficient in English ~~[are]~~ is provided in the parent's~~[-]~~ preferred language to the extent practicable, including utilizing interpretation services when appropriate; and

(8)h coordinating the language acquisition instructional services and special education and related services to ensure that the IEP is implemented as written.

~~[F:]~~(6) An ~~[school district/charter school]~~ LEA shall ~~[also]~~ provide information and training to staff that:

(a) limited English proficiency is not a disability; ~~and~~

(b) if there is evidence that a student[s] with limited English proficiency ha~~[ve]~~s a disability, ~~[they shall be referred]~~ the staff shall refer the student for possible evaluation for eligibility under IDEA.

~~[G:]~~(7)(a) ~~[Parent involvement and notification:~~

~~(1) Each school district/charter school]~~ An LEA shall notify a parent[s] who ~~[are]~~ is not proficient in English of ~~[school district/charter school]~~ the LEA's required activities.

(b) A ~~[S]~~ school[s] shall provide information about required and optional school activities in ~~[the]a~~ parent's~~[-]~~ preferred language to the extent practicable.

(2)c ~~[School districts/charter schools]~~ An LEA shall provide interpretation and translation services for a parent[s] at:

(i) registration~~[-];~~

(ii) an IEP meeting~~[-];~~

(iii) an SEOP meeting~~[-];~~

(iv) a parent-teacher conference~~[-]; and~~

(v) a student disciplinary meeting~~[-].~~

~~[H:]~~(3)d ~~[School districts/charter schools]~~ An LEA shall provide annual notice to a parent[s] of a student[s] placed in a language acquisition instructional program[s] at the beginning of the school year or no later than 30 days after identification.

(e) If a ~~[child]~~ student has been identified as requiring ALS services after the school year has started, ~~[parent notification shall take place]~~ the LEA shall notify the student's parent within 14 days of the student's identification and placement.

~~[I:]~~(8) ~~[The]~~ A required notice described in Subsection (7) shall include:

(a) the student's~~[-level of]~~ English proficiency level~~[-];~~

(b) how ~~[such]~~ the student's English proficiency level was assessed~~[-and];~~

(c) the status of the student's academic achievement;

(b)d the methods of instruction proposed to increase language acquisition, including using both the student's native language and English if necessary;

(e)e ~~[specifically];~~ specifics regarding how the methods of instruction will help the child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation; ~~and~~

(d)f the specific exit requirements for the program including:

(i) the student's expected rate of transition from the program into a classroom[s] that ~~[are]~~ is not tailored for an LEP student[s]; ~~and~~

(ii) the student's expected high school graduation ~~from secondary school(s)~~ date if funds appropriated consistent with this rule are used for a secondary school student[s].

~~(1)(a) [School districts/charter schools] An LEA shall provide notice to a parent(s) of an ELL/LEP student[s] in addition to other required parent notification~~ if the ~~[school district/school] LEA~~ fails to meet AMOs.

~~(b) [Notice shall be provided]~~ An LEA shall provide a parent the notice described in Subsection (9)(a) within 30 days of the ~~[school district's/charter school's] LEA's~~ receipt of the annual State Title III Accountability Report from the ~~[USOE] Superintendent~~.

**R277-716-5. Teacher Qualifications.**

~~[A:](1)A~~ Utah educator[s] who ~~[are]is~~ assigned to provide instruction in a language acquisition instructional program[s] shall comply with the State ESL Endorsement requirements provided in Rule R277-520.

~~[B:](2)~~ A ~~[Teachers]~~ Utah educator whose primary assignment is to provide English language instruction to an ELL/LEP student[s] shall have an ESL or ESL~~[/]~~ or Bilingual endorsement consistent with the educator's assignment.

**R277-716-6. Miscellaneous Provisions.**

~~[A:](1)(a) [School districts/charter schools] An LEA that generates less than \$10,000 from the [re] LEA's ELL/LEP student count, [are encouraged to] may form a consortium with other similar [school districts/charter schools] LEAs.~~

~~(1)b~~ ~~[The]A~~ consortium described in Subsection (1)(a) shall designate a fiscal agent and shall submit all budget and reporting information from all of the member ~~[school districts/charter schools] LEAs~~ of the consortium.

~~(2)c~~ Each member of ~~[the]a~~ consortium shall submit plans and materials to the fiscal agent of the consortium for final reporting submission to the ~~[USOE] Superintendent~~.

~~(3)d~~ ~~[The consortium]A~~ fiscal agent of a consortium described in Subsection (1)(a) shall assume[s] all responsibility of an ~~[local board] LEA~~ under Section R277-716-4.

~~[B:](2)~~ No ~~[school district, charter school] LEA~~ or consortium may withhold more than two percent of ~~[NCLB]~~ Title III funding for administrative costs in serving ELL/LEP students.

**KEY: alternative language services**

**Date of Enactment or Last Substantive Amendment:** ~~[April 3, 2006] 2016~~

**Notice of Continuation:** February 16, 2016

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

**Environmental Quality, Air Quality  
R307-841-8  
Renovator Certification and Dust  
Sampling Technician Certification**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 40207  
FILED: 02/11/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to incorporate the EPA's extension of the certification of certain renovators under the Lead Renovation, Repair, and Painting rule into state law. This will allow renovators to take advantage of EPA's new requirements for refresher courses. Without the extension, some renovators would miss out on this opportunity.

**SUMMARY OF THE RULE OR CHANGE:** The rule provides a year-long extension for the certification of a select group of renovators.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(1)(i)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ THE STATE BUDGET: No--This is already federal law that must be complied with.
- ◆ LOCAL GOVERNMENTS: No--This is already federal law that must be complied with.
- ◆ SMALL BUSINESSES: No--This is already federal law that must be complied with.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No--This is already federal law that must be complied with.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No--This is already federal law that must be complied with.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will likely be no fiscal impact from this rule on businesses. The rule is already federal law that must be complied with. Businesses that require certification under the Lead Renovation, Repair, and Painting rule will likely benefit from the extension in the rule. They will now have the opportunity to use EPA's new refresher courses.

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:**

- ◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2016

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-841. Residential Property and Child-Occupied Facility Renovation.**

**R307-841-8. Renovator Certification and Dust Sampling Technician Certification.**

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

**KEY: paint, lead-based paint, lead-based paint renovation**

**Date of Enactment or Last Substantive Amendment: [~~May 3, 2012~~2016]**

**Notice of Continuation: February 5, 2015**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)**

**Health, Disease Control and  
Prevention, Health Promotion  
R384-415  
Electronic-Cigarette Substance  
Standards**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 40210

FILED: 02/16/2016

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments are intended to clarify

requirements of the rule and also to alleviate some of the fiscal burden the rule could impose on Utah small businesses.

**SUMMARY OF THE RULE OR CHANGE:** Under Section R384-415-10, a provision has been clarified to read that retailers will be expected to have access to the documents in that section for a period of two years after the retailer purchases the electronic-cigarette substance. The required size of the safety warning statement has been reduced from 30 percent of the principle display panel to 20 percent. Also, the maximum allowed nicotine content for these products have been increased from 240mg per container to 360mg. However, the maximum nicotine concentration has stayed that same at 24mg/mL. Language has been added to the provision requiring child resistant packaging on all electronic-cigarette substance containers. The new language makes reference to any federal standards that might be put into place. This addition has been made to recognize the recently signed "Child Nicotine Poisoning Prevention Act" at the federal level. Finally, nonsubstantive grammatical changes have been made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-57-103 and Subsection 59-14-803(5)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments to the rule will not change the implementation of enforcement by the Utah Department of Health (UDOH). The same enforcement apparatus and cost that was to be used for the original rule will accommodate these amendments. As such, UDOH expects to experience no additional costs or savings. The original rule anticipated that there would be savings to the state by reducing the number of calls to the Utah Poison Control Center. In 2014, there were 131 poison control calls in Utah associated with electronic-cigarette substances. Each of these calls cost the state approximately \$65. However, amendments to the rule that increase the allowed nicotine per container and reduce the size of the safety warning statement could reduce the positive effects of this rule. Therefore, compared to original rule, this amendment may reduce the savings to the state due to an increase in poison control calls. However it is difficult to provide a specific amount. Also, because the amendments may increase the number of poisonings (compared to the original rule) there may also be a reduced savings to the Utah Medicaid Program. Poisonings among Medicaid-covered individuals would increase medical bills. It has been estimated that the medical costs associated with a single poisoning is \$15,000 for in-hospital treatment and \$3,000 for an emergency room visit. Though UDOH cannot determine the number of electronic-cigarette related poisoning among Medicaid patients (and thus the total savings), it is expected that by increasing the allowed nicotine content and reducing the size of the warning statement that there would be reduced savings to Medicaid. Since the amendments will be made before enforcement of the rule, there will be no noticeable

cost to state agencies and the overall net effect will likely be savings. However, the amended rule does reflect a potential opportunity cost when compared to the original language in the rule. (DAR NOTE: The original proposed new Rule R384-415 was published in the October 15, 2015, Bulletin under DAR No. 39797 and is effective as of 12/29/2015.)

◆ **LOCAL GOVERNMENTS:** The amendments to the rule will not change the implementation of enforcement by UDOH. The same enforcement apparatus and cost that was to be used for the original rule will accommodate these amendments. As such, no additional costs or savings are anticipated.

◆ **SMALL BUSINESSES:** UDOH anticipates that small businesses will experience reduced costs because of the amendments to the rule. Industry representatives have estimated that the amended rule will cost small specialty-businesses \$12,500 to \$1,600,000 during the first year of enforcement due to either a loss in sales or required improvements to their operations. However, representatives have also estimated that these amendments have reduced the cost of compliance by \$1,500 to \$160,000. UDOH cannot estimate cost or savings to the industry as a whole because the number of small specialty-businesses is unknown. The wide range in the cost estimate perhaps reflects the large variability in product quality that exists in the industry. Much of the responsibility to comply with the rule will fall on manufacturers who sell to Utah retailers. Industry representatives estimate that the amended rule will cost a Utah small-manufacturer approximately \$15,500 to \$266,000 over the first year of enforcement. However, representatives also have estimated that the amendments to increase the allowed nicotine content and decrease the size of the safety warning statement have reduced the cost to comply by \$17,000 to \$35,000. UDOH cannot estimate the cost or savings to the industry as a whole because the number of small manufacturers is unknown. The manufacturer could also face non-fiscal costs. Prescribing manufacturer labeling requirements may be perceived as an infringement of the manufacturer's freedom of speech. Also, the manufacturer may face a perceived infringement on their intellectual property if product information is requested by the enforcing agency. These perceived non-fiscal costs may be somewhat alleviated by the amendments. The small specialty-retailer will also face costs and savings because of the rule. Industry representatives estimate that the amended rule will cost a small specialty-retailer approximately \$46,350 to \$1,600,000 during the first year of enforcement due largely to a loss in sales. This cost estimate is based on the assumption that consumers would not purchase an alternative product if their selection of products was limited. The small specialty-retailer may incur come small costs to educate staff on compliance with the rule. It is not possible to predict these costs due to varying circumstances, but to reduce this burden the state and local health department will provide support. However, representatives also estimate that the amendments allowing for a higher nicotine content and smaller warning statements have reduced the cost to comply by \$1,500 to \$160,000. The amendments will allow retailers to keep more of their current products on the market, hence reducing the potential loss in

sales and the potential of local fines. UDOH cannot estimate the cost and savings to the industry as a whole because the number of small specialty-businesses is unknown. It is expected that small general-retailers will incur little cost through the enforcement of the rule. General retailers typically sell manufacturer-sealed electronic-cigarette substances, which are exempt from the rule. General retailers may experience some cost through educating staff on the rule or through incurring local enforcement fines. However, because the number of small general-retailers who sell these products is unknown, UDOH cannot estimate the total cost they will incur.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments will decrease the cost of compliance to businesses in the state. Those savings can be passed on to consumers in the price of electronic cigarette products. UDOH cannot estimate the total savings to the consumer due to varying circumstances of the individual retailers. However, the amendment to increase the allowed amount of nicotine and decrease the required warning statement may impose costs on other members of the public. The average medical bill associated with a poisoning is approximately \$15,000 for inpatient treatment and \$3,000 in emergency room fees. The cost of a poisoning in terms of lost productivity is approximately \$2,600 per poisoning if the victim is hospitalized. It is difficult to estimate a population level cost. There is evidence that suggests that electronic-cigarettes among youth may be connected to using traditional tobacco. If this is the case, the amendments of the rule may increase future tobacco-related medical costs. The Centers for Disease Control and Prevention has estimated that in Utah, residents as a whole experience \$542,000,000 annually because of tobacco products. General retailers may experience some cost through educating staff on the rule or through incurring local enforcement fines. However, because the number of general retailers who sell these products is unknown, UDOH cannot estimate the total cost they will incur.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** UDOH has sought comment from representatives in the electronic-cigarette industry. It is estimated that an individual small-manufacturer will incur approximately \$15,500 to \$266,000 in compliance costs during the first year of rule enforcement. It is expected that the majority of these costs will come from redesigning labels, and sales lost through limiting nicotine content. Therefore, this industry estimate is based on the assumption that the consumer would not purchase an alternate product if their selection was restricted. The small-specialty retailer will also incur compliance costs. It is estimated that a single, small specialty-retailer will need to pay approximately \$46,400 to \$1,600,000 to comply with the rule. It is expected that the majority of these costs will come from sales lost through not being able to sell products from out-of-state that don't comply with the rule. However, this industry cost estimate is based on the assumption that the consumer would not purchase an alternate product if their selection was restricted. It is expected that general retailers will incur little compliance cost because the majority of the

products they sell are exempt from the rule. The small portion of general retailers that will come under regulation may experience: 1) a negligible loss in sales; 2) some cost through educating staff; and 3) potential fines through local enforcement. However, because the number of general retailers who sell these products is unknown, UDOH cannot estimate what individual compliance cost they will incur.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendment clarifies Subsection R384-415-10(a) that retailers will be expected to retain the records required in that section for two years after the purchase of the e-cigarette substance. It also reduces the size of the safety warning statement from 30 percent of the display panel to 20 percent and increase the maximum allowed nicotine content from 240mg per container to 360mg per container. Business will see a positive fiscal impact because the proposed amendment reduces a business's cost of compliance to this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Luke Chalmers by phone at 801-538-6260, or by Internet E-mail at [tpcprules@utah.gov](mailto:tpcprules@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R384. Disease Control and Prevention, Health Promotion.**

**R384-415. Electronic-Cigarette Substance Standards.**

**R384-415-1. Authority and Purpose.**

(1) This rule is authorized by Section 26-57-103 and Subsection 59-14-803(5).

(2) This rule establishes standards for labeling, nicotine content, packaging, and product quality for electronic-cigarette substances for the regulation of electronic-cigarettes.

(3) This rule does not apply to a manufacturer-sealed electronic-cigarette substance.

(4) A product in compliance with this rule is not endorsed as safe.

**R384-415-2. Definitions.**

As used in this rule:

(1) "Artificial coloring" means the same as the term is defined in 21 C.F.R. 101.22(a)(4) (April 1, 2015) and as the term "color additive" is defined in 21 C.F.R. 70.3(f) (April 1, 2015).

(2) "Artificial flavoring" means the same as the term is defined in 21 C.F.R. 101.22(a)(1) (April 1, 2015).

(3) "Batch number" means the same as the term "lot number, control number, or batch number" is defined in 21 C.F.R. 210.3(b)(11) (April 1, 2015).

(4) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.

(5) "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R. 1700.1(a)(4) (January 1, 2015) and is tested in accordance with the method described in 16 C.F.R. 1700.20 (January 1, 2015).

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

(7) "Electronic-cigarette" means the same as the term is defined in Subsections 26-38-2(1) and 59-14-802(2).

(8) "Electronic-cigarette Product" means the same as the term is defined in Subsection 59-14-802(3).

(9) "Electronic-cigarette substance" means the same as the term is defined in Subsection 59-14-802(4).

(10) "EP standards" means the standards established for medicines by the European Pharmacopeia, the European equivalent of the United States Pharmacopeia. The EP standards define requirements for the qualitative and quantitative composition of medicines, and the tests that are to be used on medicines, substances, and materials used in their production.

(11) "Generally Recognized As Safe" means an United States Food and Drug Administration designation that a substance added to food is generally recognized, by qualified experts, as having been adequately shown to be safe under the conditions of its intended use, as found in 21 C.F.R. 170.30 (April 1, 2015). Such a substance is exempted from the usual Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq. (2013).

(12) "Local health department" means the same as the term is defined in Subsection 26A-1-102(5).

(13) "Manufacture" means the same as the term is defined in Subsection 26-57-102(5).

(14) "Manufacturer" means the same as the term is defined in Subsection 26-57-102(6).

(15) "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

(16) "Natural flavoring" means the same as the term is defined in 21 C.F.R. 101.22(a)(3) (April 1, 2015).

(17) "Nicotine" means the same as the term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 387(12) (2013).

(18) "Manufacturer-sealed electronic-cigarette substance" means the same as the term defined is in Subsection 26-57-102(6).

(19) "Pharmaceutical" means a compound manufactured for use as a medicinal drug.

(20) "Retailer" means any person who sells, offers for sale, or offers to exchange for any form of consideration, an electronic-cigarette substance to a consumer. This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(21) "Retailing" means involvement in any of the activities listed in Subsection R384-415-2(20). This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(22) "Straight color" means a color additive approved for human consumption in food and drugs as listed in 21 C.F.R. 73.1 through 21 C.F.R. 73.1991 (April 1, 2015), 21 C.F.R. 74.101 through 21 C.F.R. 74.1711 (April 1, 2015), and 21 C.F.R. 81.1 (April 1, 2015), and includes substances as are permitted by the specifications for such color.

(23) "Tamper-evident" means the packaging uses an indicator or barrier to entry that is distinctive by design, or must employ an identifying characteristic.

(24) "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the electronic-cigarette substance is in compliance with the standards in this rule.

(25) "USFDA Food Standards" means the United States Food and Drug Administration's common designation for standards of identity, standards of quality, and standards of fill of container promulgated under the Federal Food, Drug & Cosmetics Act, 21 U.S.C. Sec. 301 et seq. (2013) and as contained in 21 C.F.R. 130 through 21 C.F.R. 169 (April 1, 2015).

(26) "USP-NF standards" means the standards for drug products established by the United States Pharmacopeia and National Formulary. The USP-NF standards include standards for chemical and biological drug substances, dosage forms, compounded preparations, excipients, medical devices, and dietary supplements.

#### **R384-415-3. General Labeling.**

(1) The retailer shall ensure that a container holding an electronic-cigarette substance offered for sale to the consumer conforms to the following labeling standards:

(a) the label is smear resistant; and

(b) the label clearly displays:

(i) the nicotine content in mg/mL or percent by volume;

(ii) the manufacturer name;

(iii) the batch number;

(iv) the ingredients, as required in Section R384-415-4;

(v) a tamper-evident warning, which meets the requirements of Section R384-415-5; and

(vi) a safety warning, which meets the requirements of Section R384-415-6.

#### **R384-415-4. Labeling of Ingredients.**

(1) The retailer shall ensure that:

(a) an ingredient of an electronic-cigarette substance is listed on the label of the container holding an electronic-cigarette substance, except as provided for in Subsection R384-415-4(1)(c) (i).

(b) An artificial coloring ingredient is listed on the label using the classification system that best applies. Classification systems include:

(i) Food, Drug, and Cosmetic color designation and number;

(ii) Drug and Cosmetic color designation and number; or

(iii) the generic straight color name, if the artificial color is not classified under the systems found in Subsection R384-415-4(1)(b)(i) or Subsection R384-415-4(1)(b)(ii).

(c)(i) An ingredient included in the manufacturer's proprietary mixture of flavorings is exempt from being listed on the label by name.

(ii) An ingredient included in the manufacturer's proprietary mixture of flavorings is listed on the label under the generic term of artificial flavoring, natural flavoring, or both.

**R384-415-5. Labeling of Tamper-Evident Warning.**

(1) The retailer shall ensure that the label of an electronic-cigarette substance displays a tamper-evident warning alerting the consumer to the tamper-evident feature of the packaging

(2) The retailer shall ensure that the tamper-evident warning:

- (a) is prominently displayed to consumers;
- (b) is placed on the label so that it would be unaffected if the tamper-evidence feature is removed; and
- (c) lists the type of tamper-evident feature used with the product.

**R384-415-6. Labeling of Safety Warning.**

(1) The retailer shall ensure that an electronic-cigarette substance offered for sale to the consumer features a safety warning stating "nicotine is addictive and poisonous. Keep away from children and pets".

(2) The retailer shall ensure that the safety warning:

- (a) occupies at least ~~[30]~~20 percent of the largest panel of the container and any additional immediate packaging;
- (b) is in capitalized letters;
- (c) has a font size that occupies the maximum amount of the area described in Subsection R384-415-6(2)(a);
- (d) uses the Helvetica, Arial, or Univers font; and
- (e) uses either a black font on a white background or a white font on a black background.

**R384-415-7. Nicotine Content.**

(1) The retailer shall comply with the following nicotine content standards regarding an electronic-cigarette substance sold to the consumer:

(a) The nicotine content for an electronic-cigarette substance is limited to ~~[240]~~360 mg per container, and does not exceed a 24mg/mL concentration.

(b) The nicotine level for an electronic-cigarette substance is limited to a 10% variation in mg/mL above the content level indicated on the label.

(c) An electronic-cigarette substance labeled 0 mg/mL or 0% by volume contains no nicotine.

**R384-415-8. Packaging.**

(1) The retailer shall ensure that the packaging of an electronic-cigarette substance intended for sale to a consumer;

(a) is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention;

(b) does not leak at the time of sale; and

(c) utilizes a tamper-evident feature by means of one or more of the following:

- (i) a bubble pack;
- (ii) a heat shrink band;
- (iii) a breakable cap; or
- (iv) an inner-seal.

**R384-415-9. Product Quality.**

(1) The retailer shall ensure that an ingredient in an electronic-cigarette substance is compliant with either USP-NF standards, EP standards, USFDA Food Standards, or is Generally Recognized As Safe at the time of sale.

(2) The retailer shall be prohibited from selling an electronic-cigarette substance that contains:

- (a) vitamins or other additives that create the impression that an electronic-cigarette substance has a health benefit or presents reduced health risks;
- (b) pharmaceuticals;
- (c) caffeine or taurine or other additives and stimulant compounds that are associated with energy and vitality;
- (d) illegal or controlled substances as identified in Section 58-37-3; and
- (e) additives having coloring properties for emissions.

**R384-415-10. Record Keeping and Testing.**

(1) The retailer shall provide the electronic-cigarette substances transaction statement to the ~~[department]~~Department or the local health department within five working days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:

- (a) the nicotine content of an electronic-cigarette substance is compliant with Section R384-415-7;
- (b) the packaging of an electronic cigarette-substance is child-resistant; and
- (c) an ingredient used in an electronic-cigarette substance meets the appropriate standard found in Section R384-415-9.

(2)(a) The retailer shall have a system in place to trace production of an electronic-cigarette substance through the labeled batch number to the ingredients used in manufacturing.

(b) The retailer shall provide documents produced from batch tracing to the enforcing agency within five working days of a request.

(c) The retailer shall ensure that documents produced through batch tracing provide evidence in support of the electronic-cigarette substances transaction statement.

(3)(a) The retailer shall ~~[maintain]~~have access to the documents described in Subsections R384-415-10(1) and R384-415-10(2) for a period of two years after the retailer purchases the electronic-cigarette substance.

(b) the retailer shall provide the documents described in Subsections R384-415-10(1) and R384-415-10(2) to the Department or the local health department within 5 working days of a request.

**R384-415-11. Enforcement.**

(1) The ~~[department]~~Department may enforce and seek penalties for the violation of public health rules including, the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.

(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes



set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, 26A-1-108, 26A-1-114(1) and 26A-1-123.

(3) The ~~[department]~~Department or local health department is responsible to make a determination as to if a person holding a Utah State Tax Commission license to sell electronic cigarettes has violated the standards of this rule. If the ~~[department]~~Department or local health department makes such a determination it shall notify the Utah State Tax Commission to revoke the person's license as provided in Subsection 59-14-803(5).

(4) Administrative or civil enforcement of this rule by the ~~[department]~~Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.

**KEY:** electronic cigarettes, nicotine, standards, Electronic Cigarette Regulation Act

**Date of Last Substantive Amendment:** ~~[December 29, 2015]~~2016

**Authorizing, and Implemented or Interpreted Law:** 26-57-103; 59-14-803(5)

## Human Services, Child and Family Services **R512-42** Adoption by Relatives

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40195

FILED: 02/08/2016

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule modification is to bring the rule in line with current statute and practice.

**SUMMARY OF THE RULE OR CHANGE:** This rule change is intended to make the rule technically correct with current practice.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-102 and Section 78A-6-307 and Section 78B-6-102 and Section 78B-6-117 and Section 78B-6-128 and Section 78B-6-133 and Section 78B-6-137

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

♦ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family

Services and are, therefore, not affected by this rule and will have no fiscal impact.

♦ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have no fiscal impact on businesses.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016**

**THIS RULE MAY BECOME EFFECTIVE ON:** 04/07/2016

**AUTHORIZED BY:** Brent Platt, Director

#### **R512. Human Services, Child and Family Services.**

##### **R512-42. Adoption by Relatives.**

##### **R512-42-1. Purpose and Authority.**

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of ~~[the Division of]~~Child and Family Services ~~[(Child and Family Services)]~~.

(2) This rule is authorized by Sections 62A-4a-102, 78A-6-307, 78B-6-128, and 78B-6-133.

##### **R512-42-2. Definitions.**

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "Relative" is defined in Section 78A-6-307.

**R512-42-[2]3. Adoption by Relatives.**

(1) A relative who has a relationship with a child in state's custody who may become available for adoption may apply to adopt a particular child.

(2) The application and adoptive evaluation (commonly called a home study) will be handled in accordance with the Child and Family Services Adoption Practice Guidelines, and in accordance with R512-41 and Sections 78B-6-128 and 78B-6-133, based upon the best interest of the child.

(a) Any preferential consideration of a relative defined in Section 78A-6-306 for the initial placement of a child in state's custody expires in 120 days of the shelter hearing.

(b) When a relative who has a significant and substantial relationship with the child as set forth in Section 78B-6-133, and who was not notified by Child and Family Services within 120 days and comes forward when a child in state's custody has a permanency goal of adoption, the long-term needs of the child to have connection with family will be a priority consideration as long as the relative has the ability to meet the long-term physical, emotional, cognitive, and special needs of the child.

(3) When the 120-day time period for preferential consideration for a relative of a child in custody expires, the court shall consider an adoptive petition based on the best interest of the child and shall include:

(a) Where the child is placed.

(b) Where the child has resided for six months.

(c) Relatives who have filed a written statement with the court within 120 days of the date of the shelter hearing to:

(i) request immediate placement of the child; and

(ii) express the petitioner's intention of adopting the child.

(d) Who is a relative:

(i) with whom the child has a significant and substantial relationship; and

(ii) who was unaware, within the first 120 days after the day on which the shelter hearing is held, of the child's removal from the child's parent; or

(e) If the child:

(i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; and

(ii) is placed with, or is in the custody or guardianship of, an individual who previously informed Child and Family Services or the court that the individual is unwilling or unable to adopt the child.

**KEY: adoption**

**Date of Enactment or Last Substantive Amendment:** [~~February 9, 2010~~]2016

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

**Authorizing, and Implemented or Interpreted Law:** 62A-4a-102; 78A-6-307; 78B-6-102; 78B-6-117; 78B-6-128; ~~78B-6-133~~; 78B-6-137

Judicial Performance Evaluation  
Commission, Administration  
**R597-3-5**  
Public Comments

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40192

FILED: 02/03/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The change relates to comments about judges submitted by members of the public.

**SUMMARY OF THE RULE OR CHANGE:** It lengthens the comment period and articulates which comments will be included in the midterm and retention evaluation cycles. It also deletes the requirement that comments must be based on first-hand experience with the judge.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 78A-12-101 through 78A-12-207

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The change has no impact on the state budget because it only changes deadlines for when comments must be submitted and broadens the scope of what kind of comments may be submitted. It does not change the number of judges evaluated, which is the central factor in determining the cost of the evaluations.

♦ **LOCAL GOVERNMENTS:** The commission has no dealings with local government, so there is no cost or savings to those entities as a result of this change.

♦ **SMALL BUSINESSES:** The commission has no authority with respect to small businesses and no dealings with small businesses; consequently, there is no impact on such entities.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The only affected persons are the individual members of the public who may choose to submit comments about a judge. There is no cost or savings to them because all they are doing is submitting comments, which has no cost or savings associated with it.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no cost to members of the public if they choose to submit a comment about a judge.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendment has no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2016

AUTHORIZED BY: John Ashton, Chair

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**R597. Judicial Performance Evaluation Commission, Administration.**  
**R597-3. Judicial Performance Evaluations.**  
**R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had ~~[first-hand]~~ experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than

~~[November]~~ December 1<sup>st</sup> of the year preceding the election in which the judge's name appears on the ballot.

(3) Comments received after December 1st of the year preceding the election in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

~~\_\_\_\_\_~~ (4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

~~\_\_\_\_\_~~ (5) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

~~[\_\_\_\_\_ (4) All comments must be based upon first-hand experience with the judge.]~~

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**

**Date of Enactment or Last Substantive Amendment: ~~[May 27, 2015]~~2016**

**Notice of Continuation: February 17, 2014**

**Authorizing, and Implemented or Interpreted Law: 78A-12**

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**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends March 31, 2016.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (*example*). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through June 29, 2016, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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

Environmental Quality, Air Quality  
**R307-801**  
Utah Asbestos Rule

**NOTICE OF CHANGE IN PROPOSED RULE**  
DAR FILE NO.: 39848  
FILED: 02/11/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the change is to make Subsection R307-801-13(10)(a) of the rule less ambiguous for the regulated community.

**SUMMARY OF THE RULE OR CHANGE:** The change in the proposed rule allows alternative work practice standards to be used for removing vermiculite. The previous rule only relied on the standard described as "to the maximum extent possible." (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 1, 2015, issue of the Utah State Bulletin, on page 53. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no fiscal impact on the state budget from the change in proposed rule. The new standard only makes the rule easier for members of the regulated community to understand. It does not change what the intended substantive requirement of the rule was meant to be when it was proposed.
- ◆ **LOCAL GOVERNMENTS:** There is no fiscal impact on the local governments of Utah from the change in proposed rule. The new standard only makes the rule easier for members of the regulated community to understand. It does not change what the intended substantive requirement of the rule was meant to be when it was proposed.
- ◆ **SMALL BUSINESSES:** There is no fiscal impact on small businesses from the change in proposed rule. The new standard only makes the rule easier for members of the regulated community to understand. It does not change what the intended meaning of the rule was when it was proposed.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no fiscal impact on other persons from the change in proposed rule. The new standard only makes the rule easier for members of the regulated community to understand. It

does not change what the intended meaning of the rule was when it was proposed.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs resulting from the change in proposed rule. The new standard only makes the rule easier for members of the regulated community to understand. It does not change what the intended meaning of the rule was when it was proposed.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on businesses resulting from the change in proposed rule. The new standard only makes the rule easier for members of the regulated community to understand. It does not change what the intended meaning of the rule was when it was proposed.

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:**  
◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2016**

**AUTHORIZED BY: Bryce Bird, Director**

**R307. Environmental Quality, Air Quality.  
R307-801. Utah Asbestos Rule.**

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**R307-801-9. Asbestos Abatement, Renovation, and Demolition Projects: Requirement to Inspect.**

(1) **Applicability.** Contractors are required to have an asbestos inspection performed by a Utah certified asbestos inspector working for a Utah certified asbestos company. The asbestos inspection report shall be on-site and available when regulated work activities are being performed. Owners of residential structures including condominium owners of four units or less, not otherwise subject to the Asbestos NESHAP, are not required to perform asbestos inspections. Owners of a condominium complex of more than four units are subject to R307-801, may also be subject to the Asbestos NESHAP, but are required to perform asbestos inspections.

(2) Except as described in R307-801-9(1) and 9(3), the owner and operator shall ensure that the regulated facility to be demolished, abated, or renovated is thoroughly inspected for asbestos-containing material by an inspector certified under the provisions of R307-801-6. An asbestos inspection report shall be generated according to the provisions of R307-801-10 and completed prior to the start of the asbestos abatement, renovation, or demolition project if materials required to be identified in R307-801-10(3) will be disturbed during that project. The operator shall make the asbestos inspection report available on-site to all persons who have access to the site for the duration of the renovation, abatement, or demolition project, and to the director or authorized representative upon request.

(3) If the regulated facility has been ordered to be demolished because it is found by a government official to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator may demolish the regulated facility without having the regulated facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall:

(a) Ensure that all resulting demolition project debris is disposed of as asbestos-containing waste material (ACWM) according to R307-801-14; or

(b) reduce the amount of ACWM by segregating the ACWM from non-ACWM debris under the direction of an asbestos inspector certified according to R307-801-6 working for a company certified according to R307-801-5 and clean and encapsulate non-porous debris as non-ACWM by asbestos abatement supervisors or asbestos abatement workers who are certified according to R307-801-6 and working for a company certified according to R307-801-5.

(4) If an asbestos inspection report older than three years will be used for a regulated asbestos renovation, abatement, or demolition activity, the asbestos inspection report shall be reviewed and updated, as necessary, by an inspector who is certified according to R307-801-6 and working for a company certified according to R307-801-5. The report does not need to be reviewed until a time that it will be used for regulatory purposes such as an abatement, renovation, or demolition activity. If the inspection report is still accurate, then the inspector shall provide written documentation stating that the inspection report is still accurate. If the inspection report is not accurate, then the inspector shall provide written documentation, including new sample results, if necessary, such that the inspection report meets all requirements of R307-801.

**R307-801-10. Asbestos Abatement, Renovation, and Demolition Projects: Asbestos Inspection Procedures.**

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of facilities to be abated, demolished, or renovated:

(1) Determine the scope of the abatement, demolition, or renovation project by identifying which parts and how the facility will be abated, demolished, or renovated (e.g. conventional demolition methods, fire training, etc.).

(2) Inspect the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(3) Identify all accessible suspect asbestos-containing material (ACM) in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

Residential facilities built on or after January 1, 1981, are only required to identify all accessible sprayed-on or painted-on ceiling treatment that contained or may contain asbestos fiber, asbestos cement siding or

roofing materials, resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic, thermal-system insulation or tape on a duct or furnace, or vermiculite type insulation materials in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(4) Follow the sampling protocol in 40 CFR 763.86 (Asbestos-Containing Materials in Schools) or a sampling method approved by the director to demonstrate that suspect ACM required to be identified by R307-801-10(3) does not contain asbestos.

(5) Asbestos samples are not required to be collected and analyzed if the certified inspector assumes that all unsampled suspect ACM required to be identified by R307-801-10(3) contains asbestos and is ACM; and

(6) Complete an asbestos inspection report containing all of the following information in a format approved by the director:

(a) A description of the affected area and a description of the scope of activities as described in R307-801-10(1);

(b) A list of all suspect ACM required to be identified by R307-801-10(3) in the affected area. Include a description of the suspect ACM sufficient to be able to identify the material. For each suspect material required to be identified by R307-801-10(3), provide the following information:

(i) The amount of suspect ACM required to be identified by R307-801-10(3) in linear feet, square feet, or cubic feet;

(ii) A clear description of the distribution of the suspect ACM required to be identified by R307-801-10(3) in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and demonstrated to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A written determination or table of whether the material is regulated asbestos-containing material (RACM), Category I non-friable ACM, Category II non-friable ACM that may or will become friable when subjected to the proposed abatement, renovation, or demolition project activities, or other suspect ACM that has either not been tested and assumed to contain asbestos, or has been tested by an accredited asbestos laboratory and found not to contain asbestos greater than 1%.

(c) A list of all asbestos bulk samples required to be identified from suspect ACM by R307-801-10(3) in the affected area, including the following information for each sample:

(i) Which suspect ACM required to be identified by R307-801-10(3) the sample represents;

(ii) A clear description of each sample location;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect ACM required to be identified by R307-801-10(3) that were not accessible to inspect and that may be part of the affected area; and

(e) A list of all the asbestos inspector names, company names, and certification numbers.

(7) Floor plans or architectural drawings and similar representations may be used to identify the location of suspect ACM or samples required to be identified by R307-801-10(3).

(8) Analysis of samples shall be performed by:

(a) Persons or laboratories accredited by a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (NVLAP), or

(b) Persons or laboratories that have been rated overall proficient by demonstrating passing scores for at least two of the last three consecutive rounds out of the four annual rounds of the Bulk Asbestos Proficiency Analytical Testing program administered by the American Industrial Hygiene Association (AIHA) or an equivalent nationally-recognized interlaboratory comparison program.

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**R307-801-13. Asbestos Abatement and Renovation Project: Work Practices.**

(1) An asbestos abatement supervisor who has been certified under R307-801-6 shall be on-site during asbestos abatement project setup, asbestos removal, stripping, cleaning and dismantling of the project, and other handling of uncontainerized regulated asbestos-containing material (RACM).

(2) All persons handling any amount of uncontainerized RACM during a regulated project shall be certified as an asbestos abatement worker or an asbestos abatement supervisor certified under R307-801-6.

(3) Persons performing an asbestos abatement or renovation project at a regulated facility shall follow the work practices in R307-801-13. Where the work practices in R307-801-13(3) and (4) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.

(a) Adequately wet regulated asbestos-containing material (RACM) with amended water before exposing or disturbing it, except when temperatures are continuously below freezing (32 degrees F.), and when all requirements in 40 CFR 61.145(c)(7) are met.

(b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).

(c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-14.

(d) Ensure that RACM that is stripped or removed is promptly containerized.

(e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the work area from being released outside of the negative pressure enclosure or designated work area.

(f) Filter all waste water to five microns before discharging it to a sanitary sewer.

(g) Decontaminate the outside of all persons, equipment, and waste bags so that no visible residue is observed before leaving the work area.

(h) Apply encapsulant to RACM that is exposed but not removed during stripping.

(i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using a high-efficiency particulate air (HEPA) vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.

(j) After cleaning and before dismantling enclosure barriers, mist all surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.

(k) Handle and dispose of friable asbestos-containing material (ACM) and RACM according to the disposal provisions of R307-801-14.

(4) All operators of NESHAP-sized asbestos abatement projects shall install a negative pressure enclosure using the following work practices.

(a) All openings to the work area shall be covered with at least one layer of six mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.

(b) If RACM debris is present in the proposed work area prior to the start of a NESHAP-sized asbestos abatement project, the site shall be prepared by removing the debris using the work practice requirements of R307-801-13 and disposal requirements of R307-801-14. If the total amount of loose visible RACM debris throughout the entire work area is the SSSD amount, then site preparation may begin after the notification form has been submitted and before the end of the ten working day waiting period.

(c) A decontamination unit constructed to the specifications of R307-801-13(4)(h) shall be attached to the containment prior to disturbing RACM or commencing a NESHAP-sized asbestos abatement project, and all persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit except in a life threatening emergency situation.

(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure and shall follow all procedures required by 29 CFR 1926.1101(j)(1)(ii).

(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.

(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:

(i) Apply at least two layers of six mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;

(ii) Apply at least two layers of four mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;

(iii) Seal all seams with duct tape or its equivalent;

(iv) Maintain the integrity of all enclosure barriers; and

(v) Where a wall or floor will be removed as part of the NESHAP-sized asbestos abatement project, polyethylene sheeting need not be applied to that regulated facility component or structural member.

(g) View ports shall be installed in the enclosure or barriers where feasible, and view ports shall be:

(i) At least one foot square;

(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;

(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and

(iv) Accessible to a person outside of the enclosure.

(h) A decontamination unit shall be constructed according to the following specifications:

(i) The unit shall be attached to the enclosure or work area;

(ii) The decontamination unit shall consist of at least three chambers and meet all regulatory requirements of 29 CFR 1926.1101(j)(1)(i);



(iii) The clean room, which is the chamber that opens to the outside, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(iv) The shower room, which is the chamber between the clean and dirty rooms, shall have hot and cold or warm running water and be no less than three feet wide by three feet long by six feet high, when feasible;

(v) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(vi) The dirty room shall be provided with an accessible waste bag at any time that asbestos abatement project is being performed.

(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.

(i) The waste load-out shall consist of at least one chamber constructed of six mil or thicker polyethylene walls and six mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;

(ii) The waste load-out chamber shall be at least three feet long, three feet high, and three feet wide; and

(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and shall include a water supply with a filtered drain, clean rags, disposable rags or wipes, and clean bags.

(j) Negative air pressure and flow shall be established and maintained within the enclosure by:

(i) Maintaining at least four air changes per hour in the enclosure;

(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the regulated facility whenever possible;

(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and

(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.

(5) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-13(4)(f)(i) and (ii), the following work practices and controls may be used only under the circumstances described below:

(a) When a pipe insulation removal asbestos abatement project is conducted the following may be used:

(i) Drop cloths extending a distance at least equivalent to the height of the RACM around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent;

(ii) Either the glove bag or wrap and cut methods may be used; and

(iii) RACM shall be adequately wet before wrapping.

(b) When the RACM is scattered ACM and is found in small patches, such as isolated pipe fittings, the following procedures may be used:

(i) Glove bags, mini-enclosures as described in R307-801-13(7)(c), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.

(ii) If all asbestos disturbance is limited to the inside of negative pressure glove bags or a mini-enclosure, then non-glove bag or non-mini-enclosure building openings need not be sealed and

negative pressure need not be maintained in the space outside of the glove bags or mini-enclosure during the asbestos removal operation.

(iii) A remote decontamination unit may be used as described in R307-801-13(7)(d) only if an attached decontamination unit is not feasible.

(c) When a preformed RACM pipe insulation asbestos abatement project in a crawl space or pipe chase less than six feet high or less than three feet wide is conducted, the following may be used:

(i) Drop cloths extending a distance at least six feet around all preformed RACM pipe insulation to be removed or extended to a wall and attached with duct tape or equivalent; or

(ii) The open top catch bag method.

(6) During outdoor asbestos abatement projects, the work practices of R307-801-13 shall be followed with the following modifications:

(a) Negative pressure need not be maintained if there is not an enclosure;

(b) Six mil polyethylene drop cloth, or equivalent, large enough to capture all RACM fragments that fall from the work area shall be used; and

(c) A remote decontamination unit as described in R307-801-13(7)(d) may be used.

(7) Special work practices.

(a) If the wrap and cut method is used:

(i) The regulated facility component shall be cut at least six inches from any RACM on that component;

(ii) If asbestos will be removed from the regulated facility component to accommodate cutting, the asbestos removal shall be performed using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;

(iii) The wrapping shall be leak-tight and shall consist of two layers of six mil polyethylene sheeting, each individually sealed with duct tape, and all RACM between the cuts shall be sealed inside wrap; and

(iv) The wrapping shall remain intact and leak-tight throughout the removal and disposal process.

(b) If the open top catch bag method is used:

(i) The material to be removed can only be preformed RACM pipe insulation, and it shall be located in a crawl space or a pipe chase less than six feet high or less than three feet wide;

(ii) Asbestos waste bags that are leak-tight and strong enough to hold contents securely shall be used;

(iii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;

(iv) All material stripped from the regulated facility component shall be placed in the bag;

(v) One asbestos abatement worker shall hold the bag and another asbestos abatement worker shall strip the ACM into the bag; and

(vi) A drop cloth extending a distance at least six feet around all preformed RACM pipe insulation to be removed, or extended to a wall and attached with duct tape or equivalent shall be used.

(c) If glove bags are used, they shall be under negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5)(iii) shall be followed.

(d) A remote decontamination unit may be used under the conditions set forth in R307-801-13(5)(b); and (6), when there is an

area insufficient to construct a connected decontamination unit, or when approved by the director. The remote decontamination unit shall meet all construction standards in R307-801-13(4)(h) and shall include:

(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;

(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or asbestos abatement workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of six mil or thicker polyethylene sheeting or its equivalent; and

(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as ACWM.

(e) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).

(8) For asbestos-containing mastic removal projects using mechanical means, such as a power buffer, to loosen or remove mastic from the floor, in lieu of two layers of polyethylene sheeting on the walls, splash guards of six mil or thicker polyethylene sheeting shall be placed from the floor level a minimum of three feet up the walls.

(9) Persons who improperly disturb more than the SSSD amount of asbestos-containing material and contaminate an area with friable asbestos shall:

(a) Have the emergency clean-up portion of the project, including any portions not contained within a regulated facility or in common use areas that cannot be isolated, performed as soon as possible by a company or companies certified according to R307-801-5, and, asbestos abatement supervisor(s), and asbestos abatement worker(s) certified according to R307-801-6.

(b) Have an asbestos clean-up plan designed by a Utah certified asbestos project designer for the non-emergency portion of the project and have the asbestos clean-up plan submitted to the director for approval. An asbestos clean-up plan is not required when the disturbance results from a natural disaster, fire, or flooding.

(c) Submit the project notification form required by R307-801-11 and 12 to the director for acceptance no later than the next working day after the disturbance occurs or is discovered. For fee calculation purposes, the size of the emergency clean-up project is the area that has been contaminated or potentially contaminated by the disturbance and not the amount of asbestos-containing material disturbed.

(d) Notify the director of project completion by telephone, fax, or electronic means by the day of completion and before leaving the site.

(10) For asbestos abatement, renovation, or demolition projects that remove or otherwise disturb loose-fill vermiculite type insulation materials assumed to be regulated asbestos-containing material or found to contain greater than 1% regulated asbestiform fibers, then the material being removed is considered regulated asbestos-containing material and shall meet all the appropriate regulatory requirements of R307-801.

(a) Regulated vermiculite shall be removed to the maximum extent possible, or by following a work practice that has been established by the director, or by an alternative work practice as approved by the director. ~~[and the area where the regulated vermiculite was found shall be sprayed with a bridging or penetrating encapsulant to help minimize the amount of asbestiform fibers becoming airborne.]~~

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**KEY: air pollution, asbestos, asbestos hazard emergency response, schools**

**Date of Enactment or Last Substantive Amendment: [2015]2016**

**Notice of Continuation: February 6, 2013**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(d); 19-2-104(3)(r) through (t); 40 CFR Part 61, Subpart M; 40 CFR Part 763, Subpart E**

**End of the Notices of Changes in 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, Plant Industry **R68-4** Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40201  
FILED: 02/08/2016

### **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 4-2-2(1)(h) authorizes the department to establish standards and grades for agricultural products that are distributed or sold in the State of Utah.

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 Department since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to ensure that the consumer/buyer knows and understands the quality the fruits

and vegetables being purchased. It allows for the inspection and certification of fruits and vegetables at a federally recognized standard. Therefore, this rule should be continued.

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](mailto: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](mailto: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](mailto: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](mailto:sericson@utah.gov)

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 02/08/2016

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## Agriculture and Food, Plant Industry **R68-18** Quarantine Pertaining to Karnal Bunt

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40200  
FILED: 02/08/2016

**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 4-2-2(1)(k)(ii) grants the Department of Agriculture the authority to establish and enforce quarantines in order to protect the agricultural industry of the State of Utah. The statute allows the Department to establish quarantine for specific pests, designate the infested area, the products regulated, and specifying conditions governing shipments and issuance of certificates under which products may be shipped.

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 Department since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The quarantine for Karnal Bunt continues to protect consumers and ensures that Karnal Bunt is kept out of the State of Utah. Karnal Bunt is a fungal disease that affects wheat. While it is not found in Utah, it is known to be in Arizona, New Mexico, and Texas. This quarantine is necessary to prevent it from spreading to the Utah crops. Therefore, this rule should be continued.

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

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 02/08/2016

Commerce, Occupational and  
Professional Licensing  
**R156-67**  
Utah Medical Practice Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 40196  
FILED: 02/08/2016

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 67, provides for the licensure of physicians/surgeons. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-67-201(3)(a) provides that the Physicians Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 67, with respect to physicians/surgeons.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 2011, it has been amended four times. The only written comment received by the Division with respect to this rule was a January 2012 email comment from Hunter Finch in the Governor's Office of Planning and Budget in which he suggested a change to the Division's proposed rule filing. As a result of Mr. Finch's comments, the Division filed a change in proposed rule filing under DAR No. 35389 on 01/05/2012.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 67, with respect to physicians/surgeons. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/08/2016

**Commerce, Occupational and  
Professional Licensing  
R156-73  
Chiropractic Physician Practice Act  
Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 40208  
FILED: 02/11/2016**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 73, provides for the licensure of chiropractic physicians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-73-201(3) provides that the Chiropractic Physician Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 73, with respect to chiropractic physicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 2011, there has been one proposed rule amendment filing in December 2014 (see DAR No. 38963). The Division received the following written comments with respect to the December 2014 proposed rule amendment filing: 12/17/2014 email from James D. Knight, DC; 01/06/2015 letter from Utah

Chiropractic Association, Neil L. Erickson, DC; 12/30/2014 letter from Ronald Dressler, Utah Labor Commission/Division of Industrial Accidents; 12/17/2014 letter from National Association of Mutual Insurance Companies, Paul Martin; an undated letter from Dan S. Monson, DC; 12/29/2014 letter from Greg Molis, DC; 12/13/2014 letter from J. Chris Romney, DC, Utah College of Chiropractic Orthopedists; 01/05/2015 letter from Charles Pugh, Workers' Compensation Fund; 12/29/2014 letter from Donna Janisse-McCarty, DC; and 01/07/2015 letter from Trey Gillespie, Property Casualty Insurers Association of America. The majority of the written comments received expressed concerns with various portions of the Division's proposed rule amendment filing. Due to the numerous written comments received by the Division with respect to the proposed rule amendments in this filing, the Division and Board determined that this proposed rule filing would be allowed to lapse and further review and discussion would be conducted before another proposed rule amendment filing would be filed at a later date.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 73, with respect to chiropractic physicians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Allyson Pettley by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at apettley@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/11/2016

**Education, Administration  
R277-716  
Alternative Language Services for Utah  
Students**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40211  
 FILED: 02/16/2016

**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: Utah Constitution, Article X, Section 3, vests general control and supervision of public education in 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 comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-716 continues to be necessary because it defines the responsibilities of a local education agencies (LEA) to identify an English Language Learner/Limited English Proficient (ELL/LEP) student currently enrolled a in Utah school; to provide consistent and appropriate services to identified students; and to appropriately distribute (ELL/LEP) funds to LEAs with adequate policies. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

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

EFFECTIVE: 02/16/2016

Heritage and Arts, History

**R455-6**

**State Register for Historic Resources and Archaeological Sites**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40187  
 FILED: 02/02/2016

**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 9-8-306, 9-8-402, and 9-8-403 establish standards for state landmarks and establish compatibility between the State and National Register.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during 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 laws are active. The continuation of this rule is necessary to ensure an orderly process for the dozens of people annually that seek to have their property listed on a historic register. Therefore, this rule should be continued.

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

HERITAGE AND ARTS  
 HISTORY  
 300 RIO GRANDE ST  
 SALT LAKE CITY, UT 84101-1182  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Alysia Aldrich by phone at 801-245-7226, by FAX at 801-533-3503, or by Internet E-mail at [aaldrich@utah.gov](mailto:aaldrich@utah.gov)

AUTHORIZED BY: Julie Fisher, Executive Director

EFFECTIVE: 02/02/2016

Heritage and Arts, History

**R455-9**

Board of State History as the Cultural Sites Review Committee Review Board

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40186  
FILED: 02/02/2016

**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 9-8-205(1)(d)(e) establishes standards for the Board of State History and federal regulations regarding activities of the Cultural Sites Review Committee, Review Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during 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 law is active. The continuation of this rule is necessary to establish an orderly process for the Board of State History, Cultural Sites Review Committee, Review Board, which is established for the state to comply with the requirements of the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations as now constituted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HERITAGE AND ARTS HISTORY  
300 RIO GRANDE ST  
SALT LAKE CITY, UT 84101-1182  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Alycia Aldrich by phone at 801-245-7226, by FAX at 801-533-3503, or by Internet E-mail at aaldrich@utah.gov

AUTHORIZED BY: Julie Fisher, Executive Director

EFFECTIVE: 02/02/2016

Human Services, Child and Family Services

**R512-60**

Children's Account

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40194  
FILED: 02/08/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

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: Continuation of this rule is necessary in order for the Division of Child and Family Services to carry out the purposes of the Children's Account.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 02/08/2016





## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Division of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

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### Public Safety, Highway Patrol **R714-160** Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 40197  
FILED: 02/08/2016

EXTENSION REASON AND NEW DEADLINE: The reason for the 120-day extension is because there was a personnel change within the safety inspection administration and the notification of the five-year review was not forwarded to the new personnel to review. New deadline: 06/08/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steven Winward by phone at 801-550-6163, or by Internet E-mail at [swinward@utah.gov](mailto:swinward@utah.gov)

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 02/08/2016

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### Public Safety, Highway Patrol **R714-161** Equipment Standards for Motorcycle and ATV Safety Inspections

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 40198  
FILED: 02/08/2016

EXTENSION REASON AND NEW DEADLINE: The reason for the 120-day extension is because there was a personnel change within the safety inspection administration and the notification of the five-year review was not forwarded to the new personnel to review. New deadline: 06/08/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steven Winward by phone at 801-550-6163, or by Internet E-mail at [swinward@utah.gov](mailto:swinward@utah.gov)

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 02/08/2016

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### Public Safety, Highway Patrol **R714-162** Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 40199  
FILED: 02/08/2016

EXTENSION REASON AND NEW DEADLINE: The reason for the 120-day extension is because there was a personnel change within the safety inspection administration and the notification of the five-year review was not forwarded to the new personnel to review. New deadline: 06/07/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steven Winward by phone at 801-550-6163, or by Internet E-mail at [swinward@utah.gov](mailto:swinward@utah.gov)

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 02/08/2016

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Transportation, Program Development  
**R926-9**  
Establishment, Designation and  
Operation of Tollways

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 40204  
FILED: 02/09/2016

EXTENSION REASON AND NEW DEADLINE: The Department needs to make several changes to the text of this rule. These changes will require either a review by or approval of the Transportation Commission. The Commission meets once per month. The needed amendments can be drafted and included on a meeting agenda for review by the Commission's March meeting at the earliest. The March meeting will occur after the 02/24/2016 deadline; therefore, the Department needs an extension. New deadline: 06/23/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 02/09/2016

Transportation Commission,  
Administration  
**R940-1**  
Establishment of Toll Rates

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 40205  
FILED: 02/09/2016

EXTENSION REASON AND NEW DEADLINE: The Department needs to make several changes to the text of this rule. These changes will require either a review by or approval of the Transportation Commission. The Commission meets once per month. The needed amendments can be drafted and included on a meeting agenda for review by the Commission's March meeting at the earliest. The March meeting will occur after the 02/24/2016 deadline; therefore, the Department needs an extension. New deadline: 06/23/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 02/09/2016

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**End of the Notices of Five-Year Review Extensions 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

### Agriculture and Food

Horse Racing Commission (Utah)

No. 39951 (AMD): R52-7. Horse Racing

Published: 12/15/2015

Effective: 02/02/2016

### Plant Industry

No. 39965 (AMD): R68-9. Utah Noxious Weed Act

Published: 12/15/2015

Effective: 02/02/2016

### Regulatory Services

No. 39950 (AMD): R70-530. Food Protection

Published: 12/15/2015

Effective: 02/02/2016

### Commerce

Occupational and Professional Licensing

No. 39982 (AMD): R156-26a. Certified Public Accountant

Licensing Act Rule

Published: 01/01/2016

Effective: 02/11/2016

No. 39980 (AMD): R156-82-201. Security

Published: 01/01/2016

Effective: 02/08/2016

### Education

Administration

No. 39984 (AMD): R277-497. School Grading System

Published: 01/01/2016

Effective: 02/08/2016

No. 39996 (AMD): R277-726. Statewide Online Education Program

Published: 01/01/2016

Effective: 02/08/2016

No. 39789 (NEW): R277-920. Implementation of the School Turnaround and Leadership Development Act

Published: 10/15/2015

Effective: 02/08/2016

No. 39997 (AMD): R277-920-3. Superintendent's Designation of Low Performing Schools and Waiver Authority

Published: 01/01/2016

Effective: 02/08/2016

### Environmental Quality

Air Quality

No. 39849 (AMD): R307-110-28. Regional Haze

Published: 11/01/2015

Effective: 02/04/2016

No. 39844 (AMD): R307-312-5. Hot Mix Asphalt Plants

Published: 11/01/2015

Effective: 02/04/2016

No. 39845 (AMD): R307-328-4. Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles

Published: 11/01/2015

Effective: 02/04/2016

No. 39846 (AMD): R307-405-3. Definitions

Published: 11/01/2015

Effective: 02/04/2016

No. 39847 (AMD): R307-415-3. Definitions

Published: 11/01/2015

Effective: 02/04/2016

NOTICES OF RULE EFFECTIVE DATES

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Governor

Criminal and Juvenile Justice (State Commission on)  
No. 39964 (AMD): R356-1. Procedures for the Calculation  
and Distribution of Funds to Reimburse County Correctional  
Facilities Housing State Probationary Inmates or State Parole  
Inmates

Published: 12/15/2015  
Effective: 02/10/2016

Health

Disease Control and Prevention, Epidemiology  
No. 39952 (AMD): R386-702. Communicable Disease Rule

Published: 12/15/2015  
Effective: 02/11/2016

Health Care Financing

No. 39983 (R&R): R410-14. Administrative Hearing  
Procedures

Published: 01/01/2016  
Effective: 02/10/2016

Family Health and Preparedness, Licensing

No. 39963 (AMD): R432-100. General Hospital Standards

Published: 12/15/2015  
Effective: 02/10/2016

Natural Resources

Wildlife Resources

No. 39976 (AMD): R657-5. Taking Big Game

Published: 01/01/2016  
Effective: 02/08/2016

No. 39978 (AMD): R657-9. Taking Waterfowl, Wilson's Snipe  
and Coot

Published: 01/01/2016  
Effective: 02/08/2016

No. 39977 (AMD): R657-37. Cooperative Wildlife  
Management Units for Big Game or Turkey

Published: 01/01/2016  
Effective: 02/08/2016

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2016 through February 16, 2016. 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
<b>ADMINISTRATIVE SERVICES</b>					
<u>Facilities Construction and Management</u>					
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
<u>Finance</u>					
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39943	NEW	01/13/2016	2015-23/6
<b>AGRICULTURE AND FOOD</b>					
<u>Horse Racing Commission (Utah)</u>					
R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
<u>Plant Industry</u>					
R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	40201	5YR	02/08/2016	Not Printed
R68-9	Utah Noxious Weed Act	39965	AMD	02/02/2016	2015-24/8
R68-18	Quarantine Pertaining to Karnal Bunt	40200	5YR	02/08/2016	Not Printed
<u>Regulatory Services</u>					
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	40149	5YR	01/20/2016	2016-4/77
R70-530	Food Protection	39950	AMD	02/02/2016	2015-24/12
<b>CAPITOL PRESERVATION BOARD (STATE)</b>					
<u>Administration</u>					
R131-4	Capitol Preservation Board General Procurement Rule	40092	5YR	01/11/2016	2016-3/507
<b>COMMERCE</b>					
<u>Occupational and Professional Licensing</u>					
R156-3a	Architect Licensing Act Rule	40058	5YR	01/07/2016	2016-3/507
R156-9a	Uniform Athlete Agents Act Rule	40071	5YR	01/07/2016	2016-3/508
R156-26a	Certified Public Accountant Licensing Act Rule	39982	AMD	02/11/2016	2016-1/4
R156-37f	Controlled Substance Database Act Rule	39923	AMD	01/07/2016	2015-23/7
R156-46b	Division Utah Administrative Procedures Act Rule	40052	5YR	01/05/2016	2016-3/509
R156-55c	Plumber Licensing Act Rule	40131	NSC	02/02/2016	Not Printed
R156-60b-102	Definitions	39924	AMD	01/07/2016	2015-23/12
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	39911	AMD	01/07/2016	2015-23/14

R156-60d	Substance Use Disorder Counselor Act Rule	40055	5YR	01/05/2016	2016-3/509
R156-67	Utah Medical Practice Act Rule	40196	5YR	02/08/2016	Not Printed
R156-69	Dentist and Dental Hygienist Practice Act Rule	40150	5YR	01/21/2016	2016-4/77
R156-73	Chiropractic Physician Practice Act Rule	40208	5YR	02/11/2016	Not Printed
R156-78-102	Definitions	39912	AMD	01/07/2016	2015-23/16
R156-82-201	Security	39980	AMD	02/08/2016	2016-1/12

EDUCATION

Administration

R277-207	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	39837	NEW	01/11/2016	2015-21/17
R277-404	Requirements for Assessments of Student Achievement	40097	NSC	02/02/2016	Not Printed
R277-497	School Grading System	39984	AMD	02/08/2016	2016-1/13
R277-510	Educator Licensing - Highly Qualified Assignment	40099	5YR	01/14/2016	2016-3/510
R277-705	Secondary School Completion and Diplomas	39936	AMD	01/07/2016	2015-23/17
R277-716	Alternative Language Services for Utah Students	40211	5YR	02/16/2016	Not Printed
R277-726	Statewide Online Education Program	39996	AMD	02/08/2016	2016-1/15
R277-920	Implementation of the School Turnaround and Leadership Development Act	39789	NEW	02/08/2016	2015-20/70
R277-920-3	Superintendent's Designation of Low Performing Schools and Waiver Authority	39997	AMD	02/08/2016	2016-1/20

Rehabilitation

R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40101	5YR	01/14/2016	2016-3/510
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ENVIRONMENTAL QUALITY

Air Quality

R307-110-28	Regional Haze	39849	AMD	02/04/2016	2015-21/45
R307-312-5	Hot Mix Asphalt Plants	39844	AMD	02/04/2016	2015-21/46
R307-328-4	Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles	39845	AMD	02/04/2016	2015-21/47
R307-405-3	Definitions	39846	AMD	02/04/2016	2015-21/48
R307-415-3	Definitions	39847	AMD	02/04/2016	2015-21/50

Waste Management and Radiation Control, Radiation

R313-15	Standards for Protection Against Radiation	40003	NSC	01/15/2016	Not Printed
R313-16-230	Registration of Radiation Machines	40004	NSC	01/15/2016	Not Printed
R313-18-11	Posting of Notices to Workers	40007	NSC	01/15/2016	Not Printed
R313-21	General Licenses	40008	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	40009	NSC	01/15/2016	Not Printed
R313-32-2	Clarifications or Exceptions	40010	NSC	01/15/2016	Not Printed
R313-70	Payments, Categories and Types of Fees	40011	NSC	01/15/2016	Not Printed

FINANCIAL INSTITUTIONS

Administration

R331-26	Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	40139	5YR	01/15/2016	2016-3/511
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GOVERNOR

Criminal and Juvenile Justice (State Commission on)

R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	39964	AMD	02/10/2016	2015-24/14
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Administration

R380-60 Local Health Department Emergency Protocols 39879 AMD 01/20/2016 2015-22/32

Child Care Center Licensing Committee

R381-60 Hourly Child Care Centers 39902 AMD 01/31/2016 2015-22/34

R381-70 Out of School Time Child Care Programs 39898 AMD 01/31/2016 2015-22/40

R381-100 Child Care Centers 39896 AMD 01/31/2016 2015-22/45

Disease Control and Prevention, Epidemiology

R386-702 Communicable Disease Rule 39952 AMD 02/11/2016 2015-24/17

Family Health and Preparedness, Child Care Licensing

R430-50 Residential Certificate Child Care 39897 AMD 01/31/2016 2015-22/52

R430-90 Licensed Family Child Care 39895 AMD 01/31/2016 2015-22/57

Family Health and Preparedness, Licensing

R432-100 General Hospital Standards 39963 AMD 02/10/2016 2015-24/29

R432-270 Assisted Living Facilities 39966 AMD 01/28/2016 2015-24/41

Health Care Financing

R410-14 Administrative Hearing Procedures 39983 R&R 02/10/2016 2016-1/43

Health Care Financing, Coverage and Reimbursement Policy

R414-320 Medicaid Health Insurance Flexibility and 40181 5YR 02/01/2016 2016-4/78

Accountability Demonstration Waiver  
R414-512 Use of Extrapolation in Provider Audits 39914 NEW 01/11/2016 2015-23/20

HERITAGE AND ARTS

History

R455-6 State Register for Historic Resources and 40187 5YR 02/02/2016 Not Printed

Archaeological Sites

R455-9 Board of State History as the Cultural Sites 40186 5YR 02/02/2016 Not Printed

Review Committee Review Board

Indian Affairs

R456-1 Native American Grave Protection and 40137 5YR 01/14/2016 2016-3/511

Repatriation

HOUSING CORPORATION (UTAH)

Administration

R460-1 Authority and Purpose 40013 NSC 01/15/2016 Not Printed

R460-4 Additional Servicing Rules (Reserved) 40014 NSC 01/15/2016 Not Printed

R460-5 Termination of Eligibility to Participate in 40015 NSC 01/15/2016 Not Printed

Programs

R460-6 Adjudicative Proceedings 40016 NSC 01/15/2016 Not Printed

R460-8 Americans with Disabilities Act (ADA) 40017 NSC 01/15/2016 Not Printed

Complaint Procedures

HUMAN SERVICES

Administration

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R501-14 Background Screening 39913 R&R 01/13/2016 2015-23/24

Child and Family Services

R512-31 Foster Parent Due Process 39938 AMD 01/07/2016 2015-23/33

R512-43 Adoption Assistance 40151 5YR 01/25/2016 2016-4/79

R512-60 Children's Account 40194 5YR 02/08/2016 Not Printed

R512-100 In-Home Services 39905 AMD 01/07/2016 2015-22/65

R512-205 Child Protective Services, Investigation of 40152 5YR 01/25/2016 2016-4/79

Domestic Violence Related Child Abuse



R512-301	Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian	39939	AMD	01/07/2016	2015-23/35
R512-305	Out-of-Home Services, Transition to Adult Living Services	39955	AMD	01/21/2016	2015-24/44
R512-309	Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	39956	AMD	01/21/2016	2015-24/46
R512-310	Reasonable and Prudent Parent Standard	39940	AMD	01/07/2016	2015-23/38
<u>Recovery Services</u>					
R527-200	Administrative Procedures	40053	5YR	01/05/2016	2016-3/512
R527-250	Emancipation	40054	5YR	01/05/2016	2016-3/513
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R590-154	Unfair Marketing Practices Rule; Misleading Names	39945	AMD	01/15/2016	2015-23/40
R590-259	Dependent Coverage to Age 26	40154	5YR	01/25/2016	2016-4/80
NATURAL RESOURCES					
<u>Forestry, Fire and State Lands</u>					
R652-2	Sovereign Land Management Objectives	40138	5YR	01/14/2016	2016-3/529
R652-8	Adjudicative Proceedings	40134	5YR	01/14/2016	2016-3/529
R652-9	Consistency Review	40133	5YR	01/14/2016	2016-3/530
R652-41	Rights of Entry	40136	5YR	01/14/2016	2016-3/530
R652-80	Land Exchanges	40135	5YR	01/14/2016	2016-3/531
R652-123	Exemptions to Wildland Fire Suppression Fund	40132	5YR	01/14/2016	2016-3/531
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R651-202	Boating Advisory Council	40060	5YR	01/07/2016	2016-3/514
R651-203	Waterway Marking System	40061	5YR	01/07/2016	2016-3/514
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R651-204	Regulating Waterway Markers	40090	NSC	02/02/2016	Not Printed
R651-205	Zoned Waters	40063	5YR	01/07/2016	2016-3/515
R651-206	Carrying Passengers for Hire	40064	5YR	01/07/2016	2016-3/516
R651-206	Carrying Passengers for Hire	40091	NSC	02/02/2016	Not Printed
R651-207	Registration Fee	40066	5YR	01/07/2016	2016-3/516
R651-208	Backing Plates	40067	5YR	01/07/2016	2016-3/517
R651-209	Anchored and Beached Vessels	40084	5YR	01/07/2016	2016-3/517
R651-210	Change of Address	40068	5YR	01/07/2016	2016-3/518
R651-211	Assigned Numbers	40069	5YR	01/07/2016	2016-3/518
R651-212	Display of Yearly Registration Decals and Month of Expiration Decals	40070	5YR	01/07/2016	2016-3/519
R651-213	Dealer Numbers and Registrations	40072	5YR	01/07/2016	2016-3/519
R651-214	Temporary Registration	40073	5YR	01/07/2016	2016-3/520
R651-215	Personal Flotation Devices	40074	5YR	01/07/2016	2016-3/520
R651-216	Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation	40075	5YR	01/07/2016	2016-3/521
R651-217	Fire Extinguishers	40076	5YR	01/07/2016	2016-3/522
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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)  
 CPR = Change in Proposed Rule  
 EMR = 120-Day (Emergency) Rule  
 EXD = Expired Rule  
 EXP = Expedited Rule  
 EXT = Five-Year Review Extension  
 GEX = Governor's Extension  
 LNR = Legislative Nonreauthorization  
 NEW = New Rule (Proposed Rule)  
 NSC = Nonsubstantive Rule Change  
 R&R = Repeal and Reenact (Proposed Rule)  
 REP = Repeal (Proposed Rule)  
 5YR = Five-Year Notice of Review and Statement of Continuation

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