UTAH STATE BULLETIN

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Nancy L. Lancaster, Managing Editor

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://rules.utah.gov/.

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

Office of Administrative Rules, Salt Lake City 84114

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NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 16, 2022, 12:00 a.m., and July 01, 2022, 11:59 p.m. are included in this, the July 15, 2022, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least August 15, 2022. 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 November 12, 2022, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the* **RULE ANALYSIS** *for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-25**	**Filing ID 54706**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.golv
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R68-25. Industrial Hemp Program for Processors

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Changes are needed to implement statutory changes made with the passage of S.B. 190 and H.B. 385 during the 2022 General Session, as well as provide clarification to improve the management of the industrial hemp program.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

Definitions are added and clarified to make this rule consistent with current statute. This rule is updated throughout to clarify that the Department of Agriculture and Food's (Department) regulatory focus is on cannabinoid products rather than industrial hemp products given that industrial hemp cultivation is now regulated federally. Language is added to Sections R68-25-4 and R68-25-5 to clarify that all key participants require a background check. Specific extraction requirements are added to Section R68-25-6. Clarification is added requiring that standardized scales be registered with the department. Labeling requirements are added related to derivative and synthetic cannabinoids. Transportation requirements are simplified in Section R68-25-13. Finally, additional violations are added to the violation section to assist in the Department's management of the program and issuance of citations. The violations are generally consistent with the current version of this rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved the regulatory impact analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 4-41-103(4)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig. W. Buttars, Commissioner	**Date:**	06/27/2022

R68. Agriculture and Food, Plant Industry.
R68-25. Industrial Hemp Program [~~for~~]- Cannabinoid Product Processors.
R68-25-1. Authority and Purpose.

Pursuant to Subsection 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Program for the processing and handling of [~~industrial hemp~~]cannabinoid products.

R68-25-2. Definitions.

1) "CBD" means cannabidiol (CAS #13956-29-1).

2) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS #25555-57-1); or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

3) "Cannabinoid concentrate" means:

a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; and

b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

4) "Cannabinoid product" means a product that:

a) contains one or more cannabinoids;

b) contains less than the cannabinoid product THC level by dry weight; and

c) after December 1, 2022, contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content.

5) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.

6) "Community location" " means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.

[4]7) "Department" means the Utah Department of Agriculture and Food.

8) "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert one cannabinoid into another.

[~~5~~]9) "Final product" means a reasonably homogenous [~~industrial hemp~~]cannabinoid product in its final packaged form created using the same standard operating procedures and the same formulation.

[~~6~~]10) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

11) a) "Key participant" means any person who has a financial interest in the business entity, including members of a limited liability company, sole proprietor, partners in a partnership, and incorporators or directors of a corporation.

b) "Key participant" includes an:

i) individual at an executive level, including a chief executive officer, chief operating officer, or chief financial officer; and

ii) an operation manager, site manager, or any employee who may present a risk of diversion.

[~~7~~]12) "Handle" or "Handling" means possessing, transporting, or storing industrial hemp for any period[~~ of time~~].

[~~8~~]13) "Processing" means any action taken to prepare industrial hemp, or material derived from industrial hemp, for market.

[~~9~~]14) "Processor" means a person licensed by the department to process industrial hemp or a material derived from industrial hemp.

1[~~0~~]5) "Manufacturing" means storing, preparing, packaging, or labeling of industrial hemp or [~~hemp~~]cannabinoid products.

16) "Non-compliant material" means:

(a) a hemp plant or plant material that does not comply with this rule, including a cannabis plant with a concentration of 0.3% tetrahydrocannabinol or greater by dry weight; and

(b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid product THC level.

1[~~1~~]7) "Raw plant material" or "Raw concentrate" means industrial hemp plant material or concentrate that is not in final product form.

18) "Synthetic cannabinoid" means any cannabinoid that:

(a) was chemically synthesized from starting materials other than a naturally occurring cannabinoid; and

(b) is not a derivative cannabinoid.

1[~~2~~]9) "Tetrahydrocannabinol" or "THC" means [~~total composite tetrahydrocannabinol, including~~]delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS #1972-08-3[~~ tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(iii)(AA)~~].

20[~~13~~]) "Third-party laboratory" means a laboratory that has no direct interest in a grower or processor of industrial hemp or [~~industrial hemp~~]cannabinoid products that is capable of performing mandated testing utilizing validated methods.

R68-25-3. Industrial Hemp Processor Licenses.

1) The department shall issue the following industrial hemp processor licenses:

a) a Tier One license, which allows a licensee to receive, store, extract, transport, and sell raw plant material or raw concentrate, and manufacture finished [~~industrial hemp~~]cannabinoid product;

b) a Tier Two license, which allows a licensee to receive raw plant material and extract it into raw concentrate to store, sell, or transport;

c) a Tier Three license, which allows a licensee to receive[~~,~~] cannabinoid concentrate under 0.3% THC concentration, and manufacture, store, package, and label finished [~~industrial hemp~~]cannabinoid product; and

d) a Tier Four license, which allows a licensee to receive, store, transport, or sell raw concentrate, raw plant material, or finished [~~industrial hemp~~]cannabinoid product, and perform minimal processing for the purpose of storage only.

2) A Tier One processor may accept industrial hemp derived cannabinoid concentrate with greater than 0.3% THC concentration from another Tier One processor or a Tier two processor.

R68-25-4. Application Requirements.

1) The applicant shall be a minimum of 18 years old.

2) The applicant is not eligible to receive a license if they have[~~:~~

~~a)~~] been convicted of a drug-related felony or its equivalent[~~; or~~

~~b) been convicted of a drug-related misdemeanor within the last ten years.~~].

3) An applicant seeking an industrial hemp processing license shall submit the following to the department:

a) a complete application form provided by the department;

b) a physical description of the processing facility;

c) a plan review of the building, facilities, and equipment;

d) a [~~photographic aerial map and~~]street address for each building or site where industrial hemp or cannabinoid products will be processed, handled, or stored;

e) the planned source of industrial hemp material; and

f) a statement of the intended end use or disposal for each part of the industrial hemp plant and hemp material[~~; and~~].

[~~g) a research plan.~~]

4) Each applicant and key participant shall submit to a background check pursuant to the requirements of Subsection 4-41-103.2(6) and shall provide the department with an authorization form allowing the department to access their background information[~~An applicant shall submit a nationwide criminal history from the FBI completed within three months of their application~~].

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit the required information.

7) Each applicant for a Tier one, Tier Two, or Tier Three license shall be required to register as a food establishment under Section 4-5-301 pursuant to the requirements of Section R68-25-7.

R68-25-5. Processing Facility Restrictions.

1) A licensee shall not process or store leaf or floral material from industrial hemp in any structure that is used for residential purposes.

2) A licensee shall not process or store industrial hemp within 1,000 feet of a [~~school or a public recreational area~~]community location.

3) A licensee shall not process or handle industrial hemp or hemp material from any person who is not licensed by the department or the United States Department of Agriculture (USDA)

or from a person] outside the state who is not authorized by the laws of that state.

4) A licensee shall not permit a person under the age of 18 to [~~handle~~]access industrial hemp or cannabinoid products[~~ living plants, viable plant parts, viable seeds, leaf material, or floral material~~].

5) A licensee shall ensure that[~~submit a nationwide criminal history from the FBI to the department for~~] each [~~employee~~]key participant [~~with access to material which contains, or may contain, over 0.3% THC~~]has submitted to a background check as required in Subsection 4-41-103.2(6) and authorized the department to access their background information within the first month of employment.

6) The licensee shall notify the department if a key participant separates from the licensee within two weeks following the separation.

R68-25-6. Extraction Methods.

1) In addition to the requirements of Section R68-25-4, an applicant seeking to engage in the extraction of cannabinoid concentrate from industrial hemp shall submit to the department a detailed description of the proposed extraction method.

2) The applicant shall describe the proposed process for the removal of any [~~harmful~~]solvents added during the extraction process, if applicable.

3) The applicant shall describe the safety measures proposed to protect the public and employees from dangers associated with extraction methods.

4) The department may deny a license for methods that pose a significant risk to public health and safety.

5) Each licensee shall adhere to the following extraction guidelines:

a) ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least 99% purity;

b) use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control each source of ignition where a flammable atmosphere is or may be present;

c) ensure that any carbon dioxide (CO_2) gas extraction system uses a professional grade closed loop CO_2 gas extraction system where each vessel is rated to a minimum of six hundred pounds per square inch and CO_2 shall be at least 99% purity;

d) ensure that closed loop hydrocarbon, alcohol, or CO_2 extraction systems are commercially manufactured and bear a permanently affixed and visible serial number;

e) upon request, provide the department with documentation showing that the system is:

i) safe for its intended use; and

ii) commercially manufactured.

6) The applicant shall indicate whether they will be using derivative or synthetic cannabinoids and how they will produce or procure them.

[~~5) The department shall not allow the use of butane or propane in any extraction method.~~]

R68-25-7. Processing Practices.

1) The department incorporates by reference 21 CFR 111, Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements for a licensee engaged in processing a [~~CBD~~]cannabinoid product intended for human consumption.

2) The department incorporates by reference 21 CFR [~~117~~]507, Current Good Manufacturing Practice, Hazard analysis, and Risk-Based Preventive Controls for [~~Human~~]Food for Animals for a licensee engaged in processing [~~non~~]cannabinoid products for [~~human or~~]animal consumption.

3) [~~Processors~~]Each licensee shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and any other applicable state laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

4) A licensee that manufactures cannabinoid products for human consumption or use as cosmetics shall be registered with the Division of Regulatory Services within the department.

5) A licensee shall use a standardized scale that is registered with the department when industrial hemp or cannabinoid products are:

a) packaged for sale by weight; or

b) bought and sold by weight.

6) A licensee that also is a holder of a medical cannabis processing license shall adhere to the separation requirements of Section R68-28-5 to ensure physical separation of medical cannabis and industrial hemp in their facility.

R68-25-8. Required Reports.

1) A licensee shall submit a completed Production Report on a form provided by the department by December 31st.

[~~2) A licensee shall submit a report of the results of the research as set forth in the research plan by December 31st.~~]

[~~3~~]2) The failure to submit a timely completed form may result in the denial of a renewal license.

R68-25-9. Additional Records.

1) The licensee shall keep records of receipt for any industrial hemp material obtained including:

a) the date of receipt;

b) quantity received;

c) an identifying lot number created by the licensee; and

d) the seller's information including:

i) the seller's department license number;

ii) seller's contact information; and

iii) the address of the facility or growing area from which the industrial hemp material was shipped.

2) The licensee shall keep records that include the following information for each batch of industrial hemp material processed;

a) the date of processing;

b) the lot number of the material;

c) the amount processed;

d) the type of processing; and

e) any lab test conducted on the industrial hemp material or product during the processing.

3) The licensee shall keep records of any derivative or synthetic cannabinoids procured or produced and the products they are used for.

[~~3~~]4) The licensee shall keep records of any tests conducted with the identifying lot number.

[~~4~~]5) A licensee processing a cannabinoid product for human consumption shall keep records required by 21 CFR 111 including:

a) written procedures for preventing microbial contamination;

b) documentation of training of employees;
c) cleaning logs of equipment;
d) procedures for cleaning the physical facility;
e) documentation of your qualification of supplier; and
f) documentation of calibration of machinery.

[~~5~~]6) A licensee processing a [~~non-~~]cannabinoid product for animals shall keep records as required by 21 CFR [~~117~~]507 including:

a) written procedures for preventing microbial contamination;
b) documentation of training of employees;
c) cleaning logs of equipment;
d) procedures for cleaning the physical facility; and
e) documentation of calibration of machinery.

7) The licensee shall keep records of any products they have manufactured and the disposition of any cannabinoid material that leaves the facility.

[~~6~~]8) Records shall be maintained for a minimum of three years.

[~~7~~]9) Records are subject to review by department officials at the time of inspection or upon request.

R68-25-10. Testing.

1) For [~~industrial hemp~~]cannabinoid products that will be used for human consumption or absorption the product shall be tested for the following before being made available for retail sale:
a) cannabinoid profile;
b) solvents;
c) pesticides;
d) microbials;[~~ and~~]
e) heavy metals[~~.~~]; and
f) foreign matter.

2) The testing shall be completed by a third-party laboratory.

3) The department shall conduct random testing of [~~industrial hemp~~]cannabinoid products and materials.

4) The sample taken by the department shall be the official sample.

R68-25-11. Inspections and Sampling.

1) The department shall have complete and unrestricted access to industrial hemp plants, seeds, and materials and any land, buildings, and other structures used to process industrial hemp.

2) Samples of [~~each~~]industrial hemp or cannabinoid product may be randomly taken from the facilit[~~ies~~]y by department officials.

3) The department may review records kept in accordance with rule requirements.

4) The department shall notify a licensee of test results greater than 0.3% THC.

5) Any laboratory test with a result greater than 0.3% THC may be considered a violation of the terms of the license and may result in an immediate license revocation.

6) Any laboratory test of a final product with a result of 1% THC or greater shall be turned over to the appropriate law enforcement agency and revocation of the processor license shall be immediate.

7) The department shall notify the licensee of any solvents, metals, microbials, [~~or~~]pesticides, or foreign matter found during testing.

8) The presence of deleterious or harmful substances may be considered a violation of the terms of the license and may result in a license revocation.

R68-25-12. Storage of Industrial Hemp and [~~Hemp Material~~|Cannabinoid Products.

1) A licensee may store hemp and [~~hemp~~]cannabinoid products at their licensed facility provided:

[~~a) the licensee notifies the department of the location of the storage facility;~~]

[~~b~~]a) the licensee informs the department of the type and amount of the product being stored in the storage facility;

[~~c~~]b) the storage facility is outside of the public view; and

[~~d~~]c) the storage facility is secured with physical containment such as walls, fences, locks, and with an alarm system to provide maximum reasonable security.

2) A licensee may store a cannabinoid concentrate that exceeds 0.3% THC provided:
a) the concentrate is kept in a secure room;
b) the concentrate is kept separate from other hemp products;
c) access to the concentrate is limited; and
d) a record is kept of the amount of concentrate being stored and when it is being moved.

3) Storage facilities shall be maintained in accordance with the practice adopted in Section R68-25-7.

4) Storage facilities and records are subject to random inspection by department officials.

R68-25-13. Transportation of Industrial Hemp Material.

[~~1) A licensee may move nonviable hemp product without an industrial hemp transportation permit.~~

~~2) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp, cannabinoid concentrate, or industrial hemp products.~~

~~3) The sending licensee shall request an industrial hemp transportation permit on a form provided by the department.~~

~~4) Requests for an industrial hemp transportation permit shall be submitted to the department at least five business days prior to movement.~~

~~5) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.~~

~~6) The department may deny any application for an industrial hemp transportation permit that is not completed in accordance with this rule.~~

~~7) The receiving licensee shall verify the receipt of the industrial hemp on a form provided by the department.~~

~~8) A licensee extracting cannabinoids from industrial hemp shall not transport any product until the department has been notified of the THC test results for the product being transported.~~]

1) Each movement of industrial hemp material shall include a transport manifest that includes the following information:
a) a copy of the COA for each batch included in the shipment;
b) the location of the sending and receiving parties;
c) proof of registration or licensure for the sending and receiving parties; and
d) a bill of lading for the transported material.

R68-25-14. Restriction on the Sale and Transfer of Industrial Hemp Material.

1) A licensee shall not sell or transfer living plants, viable plants, viable seed, leaf material, or floral material to any person not licensed by the department or the USDA.

2) A licensee shall not sell or transfer living plants, viable seed, leaf material, or floral material to any person outside the state who is not authorized by the laws of that state or the USDA.

3) A licensee may sell stripped stalks, fiber, and nonviable seed to the general public provided the [~~product's~~]material's THC level is less than 0.3%.

R68-25-15. Renewal.

1) A licensee shall resubmit the documents required in Section R68-25-4, with updated information, before December 31st of the current year.

2) The department may deny a renewal for an incomplete application.

3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

R68-25-16. Violation.

1) It is a violation to process industrial hemp or industrial hemp material on a site not approved by the department.[~~ as listed on the license or within 1,000 feet of a school or public recreational area~~].

2) It is a violation to process industrial hemp or industrial hemp material on a site within 1,000 feet of a community location.

[~~2~~]3) It is a violation to process industrial hemp or industrial hemp material from a source that is not approved by the department.

[~~3~~]4) A licensee shall not allow unsupervised public access to hemp processing facilities.

[~~4~~]5) It is a violation to employ a person under the age of 18 in the processing or handling of industrial hemp or [~~its~~]cannabinoid products.

[~~5~~]6) It is a violation to sell a cannabinoid product to the general public or another licensee in violation of this section or state laws governing the final product.

[~~6~~]7) It is a violation to add cannabinoids to a food product.

[~~7~~]8) It is a violation to process raw concentrate without [~~an~~]the appropriate industrial hemp processor license.

[~~8~~]9) It is a violation to fail to keep records required by this [~~section~~]rule or to fail to adhere to the notification requirements of this rule.

10) It is a violation to use derivative or synthetic cannabinoids in cannabinoid products without notifying the department.

[~~9~~]11) It is a violation for a licensee to allow an employee that has been convicted of a drug-related felony or its equivalent access to hemp material or cannabinoid product [~~which~~]that contains over 0.3% THC or has the potential to contain over 0.3% THC.

[~~10) It is a violation for a licensee to allow an employee that has been convicted of a drug-related misdemeanor within the last ten years access to hemp material or product which contains over 0.3% THC or has the potential to contain over 0.3% THC.~~]

1[~~1~~]2) It is a violation to possess cannabinoid concentrate without an industrial hemp processing license.

13) It is a violation to store cannabinoid concentrate with greater than 0.3% THC concentration without following the requirements of Subsection R68-25-12(2).

14) It is a violation to store industrial hemp material without a processor license from the department or a cultivator license from the USDA.

15) It is a violation to possess non-compliant material.

16) It is a violation for a licensee to engage in practices outside of the scope of their license.

17) It is a violation to use an extraction method that is not authorized by Section R68-25-6.

18) It is a violation to employ a key participant without a background check for longer than 30 days.

19) It is a violation to operate a facility that does not meet current Good Manufacturing Practice requirements.

20) For holders of industrial hemp and medical cannabis processing licenses, it is a violation to operate a facility that does not adhere to the separation requirements of Section R68-28-5.

21) It is a violation to sell a cannabinoid product that has not been tested as required by Section R68-25-10.

22) It is a violation to deny the department the ability to take a sample of a cannabinoid product during an inspection or as part of an investigation.

23) It is a violation to deny the department access to an industrial hemp processing facility or industrial hemp processing facility records during regular business hours.

KEY: cannabidiol, hemp products, hemp extraction, hemp oil
Date of Last Change: [~~October 29, 2021~~]2022
Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-26**	**Filing ID 54705**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
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Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R68-26. Industrial Hemp Product Registration and Labeling

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Changes are needed to implement statutory changes made with the passage of S.B. 190 and H.B. 385 during the 2022 General Session, as well as provide clarification to improve the management of the industrial hemp program.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

Definitions are added and clarified to make the rule consistent with current statute. The rule is updated throughout to clarify that the Department of Agriculture and Food's regulatory focus is on cannabinoid products rather than industrial hemp products given that industrial hemp cultivation is now regulated federally. Language is added to Section R68-26-3 to allow product registration to last one calendar year. Language is added to Section R68-26-5 clarifying labeling requirements regarding material that might appeal to children. Retail requirements are removed from this rule because they are now addressed in another rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0

Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved the regulatory impact analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 4-41-103(4)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig. W. Buttars, Commissioner	**Date:**	06/27/2022

R68. Agriculture and Food, Plant Industry.
R68-26. [~~Industrial Hemp~~]Cannabinoid Product Registration and Labeling.
R68-26-1. Authority and Purpose.

1) Pursuant to Subsections 4-41-103(4) and 4-41-403(1), this rule establishes the requirements for labeling and registration of products made from and containing industrial hemp.

R68-26-2. Definitions.

1) "Cannabinoid product" means a product that:

a) contains or is represented to contain one or more naturally occurring cannabinoids; and

b) contains less than the cannabinoid product THC level, by dry weight; and

c) after December 1, 2022, contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content.

2) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.

[~~1~~]3) "CBD"[~~ means cannabidiol.~~] or "Cannabidiol" means the cannabinoid identified as CAS# 13956-29-1.

[~~2~~]4) "Certificate of Analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.

5) "Conventional Food" means:

a) an article used for food or drink for human consumption or the components of the article; or

b) chewing gum or chewing gum components.

[~~3~~]6) "Department" means the Utah Department of Agriculture and Food.

[~~4~~]7) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

8) "Industrial hemp product class" means group of cannabinoid products:

a) that have all ingredients in common; and

b) are produced by and for the same company.

[~~5) "Industrial hemp product" means products derived from, or made by processing industrial hemp plants or plant parts.~~]

[~~6~~]9) "Label" means the display of each written, printed, or graphic matter upon the immediate container or statement accompanying an industrial hemp product.

[~~7~~]10) "Manufacturer" means a person who makes any industrial hemp products.

11) "Non-compliant material" means:

a) a hemp plant that does not comply with this rule, including a cannabis plant with a concentration of 0.3% tetrahydrocannabinol or greater by dry weight; and

b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid product THC level.

[~~8~~]12) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.

13) "THC" or "Tetrahydrocannabinol" means delta-9-tetrayhdrocannabinol, the cannabinoid identified as CAS # 1972-08-3.

14) a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

b) "THC analog" does not include the following substances or the naturally occurring acid forms of the following substances:

i) cannabichromene (CBC), the cannabinoid identified as CAS# 20675-51-8;

ii) cannabicyclol (CBL), the cannabinoid identified as CAS# 21366-63-2;

iii) cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;

iv) cannabidivarol (CBDV), the cannabinoid identified as CAS# 24274-48-4;cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;

v) cannabielsoin (CBE), the cannabinoid identified as CAS# 52025-76-0;

vi) cannabigerol (CBG), the cannabinoid identified as CAS# 25654-31-3;

vii) cannabigerovarin (CBGV), the cannabinoid identified as CAS# 55824-11-8;

viii) cannabinol (CBN), the cannabinoid identified as CAS# 521-35-7;

ix) cannabivarin (CBV), the cannabinoid identified as CAS# 33745-21-0; or

x) delta-9-tetrahydrocannabivarin (THCV), the cannabinoid identified as CAS# 31262-37-0.

[~~9) "THC" means total composite tetrahydrocannabinol, including delta-9-tetrahydrocannabinol, tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(iii)(AA).~~]

1[~~0~~]5) "Third-party laboratory" means a laboratory with no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

R68-26-3. Product Registration.

1) Each cannabinoid product or industrial hemp product class distributed or available for distribution in Utah shall be officially registered annually with the department.

2) Application for registration shall be made to the department on a form provided by the department including the following information:

a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;

b) the name of the product;

c) the type and use of the product;

d) a complete copy of the label as it will appear on the product in a legible format; and

e) if the product has been assigned a National Drug Code in accordance with 21 CFR 207.33, the applicant shall provide the National Drug Code number.

3) [~~If the industrial hemp product being registered contains a cannabinoid, t~~]The application shall include a certificate of analysis from a third-party laboratory for the product in compliance with Section R68-26-4. The certificate of analysis shall show the cannabinoid profile of the product by percentage of mass.

4) A registration fee per product, as set forth in the fee schedule approved by the legislature, shall be paid to the department with the submission of the application.

5) The department may deny registration for an incomplete application.

6) A new registration is required for any of the following:

a) any change in the [~~industrial hemp~~]cannabinoid product ingredients;

b) any change to the directions for use; and

c) any change of name for the product.

7) Other changes shall not require a new registration but the registrant shall submit copies of each label change to the department as soon as they are effective.

8) The person registering the [~~industrial hemp~~]cannabinoid product is responsible for the accuracy and completeness of information submitted.

9) A registration is good for one calendar year from the date of registration and shall be renewed through payment of an annual renewal fee before expiration.[~~renewable for up to a one-year period with an annual renewal fee per product that shall be paid on or before June 30th of each year.~~]

10) A[~~n industrial hemp~~] cannabinoid product that has been discontinued shall continue to be registered in the state until the product is no longer available for distribution.

11) A late fee shall be assessed for a renewal of an industrial hemp product registration submitted after June 30th and shall be paid before the registration renewal is issued.

12) The department shall not register a[~~n industrial hemp~~] cannabinoid product [~~containing a cannabinoid~~]if the product:

a) uses the cannabinoid as a food additive; or

b) is represented for use as a conventional food, with the exception of:[~~.~~]

i) a gummy if the gummy is shaped as a gelatinous cube or gelatinous rectangular cuboid or in another basic geometric shape and not in a shape that could be considered appealing to children such as a star shape, fruit, or animal shape; or

ii) a liquid suspension under two ounces.

R68-26-4. Certificate of Analysis.

1) A certificate of analysis for any industrial hemp product containing a cannabinoid shall be available through a QR code or website listed on the label.

2) Testing shall be conducted on the product in its final form for:

a) the cannabinoid profile by percentage of mass;

b) solvents;

c) pesticides;

d) microbials;

e) heavy metals; and

f) mycotoxins.

3) The test results required in Subsection R68-26-4(1) shall be reported in accordance with the requirements for a cannabinoid product in Rule R68-29 including the specified units of measure.

4) The certificate of analysis shall include the following information:

a) the batch identification number;

b) the date received;

c) the date of completion;

d) the method of analysis for each test conducted; and

e) proof that the certificate of analysis is connected to the product.

R68-26-5. Label Requirements.

1) [~~Industrial hemp~~]Cannabinoid products [~~containing a cannabinoid~~]produced for oral human consumption shall be labeled in accordance with:

a) 21 CFR 101.1, Principal display panel of package form food;

b) 21 CFR 101.2, Information panel of package form food;

c) 21 CFR 101.3, Identity labeling of food in packaged form;

d) 21 CFR 101.4, Food; designation of ingredients;

e) 21 CFR 101.5, Food; name and place of business of manufacturer, packer, or distributor;

f) 21 CFR 101.7, Declaration of net quantity of contents;

g) 21 CFR 101.9(j)(13) and (17), Nutrition labeling of food;

h) 21 CFR 101.15, Food; prominence of required statements; and

i) 21 CFR 101.36, Nutrition labeling of dietary supplements;

i) a label may contain the term "product facts" in place of "supplement facts" provided the information required in 21 CFR 101.36 is on the label; and

ii) the label shall include the following text, prominently displayed: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

2) A cannabinoid product intended to be vaporized for inhalation shall:

a) be labeled in accordance with Subsection R68-26-5(1); or

b) be labeled in accordance with 21 CFR 101.1, 21 CFR 101.2, 21 CFR 101.3, 21 CFR 101.4, 21 CFR 101.5, 21 CFR 101.7, 21 CFR 101.15, and contain the following text, prominently displayed: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

3) Industrial hemp products containing a cannabinoid produced for absorption by humans shall be labeled in accordance with 21 CFR 701, Cosmetic Labeling.

4) Industrial hemp products containing cannabinoids other than CBD shall contain the following text, prominently displayed: "Warning - The safety of this product has not been determined."

5) Notwithstanding Subsection R68-26-5(1) or R68-25-5(3), an industrial hemp product containing a cannabinoid produced for human use that has a National Drug Code issued shall be labeled in accordance with 21 CFR 201.66.

6) In addition to the requirements of Subsections R68-26-5(1) through R68-26-5(3) an industrial hemp product containing a cannabinoid shall have on the label a scannable barcode, QR code, or web address linked to a document containing the following information:

a) the total quantity produced; and

b) a downloadable link for a certificate of analysis for the batch identified.

7) [~~Industrial hemp~~]Cannabinoid products shall not contain medical claims on the label unless the product has been registered with the FDA and is labeled in accordance with Subsection R68-26-5(4).

8) Cannabinoid product labeling shall clearly show that the product contains material derived from industrial hemp and not cannabis or medical cannabis.

9) Cannabinoid product labeling shall not:

a) have any likeness bearing resemblance to a cartoon character or fictional character; or

b) appear to imitate a food or other product that is typically marketed toward or appealing to children.

[~~8) Industrial hemp products that do not contain a cannabinoid intended for human consumption shall be labeled in accordance with 21 CFR 101, Food Labeling.~~

~~9) Industrial hemp products that do not contain a cannabinoid and are intended for human absorption shall be labeled in accordance with 21 CFR 701, Cosmetic Labeling.~~

~~10) Industrial hemp products meant for animal consumption shall be labeled and comply with applicable federal laws and regulations and other applicable state laws and regulations.~~

~~11) Industrial hemp seed products intended for cultivation shall be labeled in accordance with Title 4, Chapter 16, Utah Seed Act.~~

~~12) Each industrial hemp product shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9 and other applicable federal laws and regulations and applicable state laws and regulations relating to the labeling of food, cosmetics, and fiber.~~]

R68-26-6. Inspection and Testing.

1) The department shall conduct randomized inspection of [~~industrial hemp~~]cannabinoid products distributed or available for distribution in the state for compliance with this rule.

2) The department shall periodically sample, analyze, and test industrial hemp products distributed within the state for compliance with registration and labeling requirements and the certificate of analysis[~~, if applicable~~].

3) The department may conduct inspection of [~~industrial hemp~~]cannabinoid products distributed or available for distribution for any reason the department deems necessary.

4) The sample taken by the department shall be the official sample.

[~~R68-26-7. Retailer Responsibilities.~~

~~1) A retailer shall:~~

~~a) ensure that any industrial hemp product is labeled correctly; and~~

~~b) ensure that each industrial hemp product sold is properly registered with the department.~~

~~2) Retailers shall provide the identity of the manufacturer of industrial hemp products sold upon request of the department.~~

~~3) A retailer may register the product in lieu of the manufacturer if the product is not registered.~~]

R68-26-[~~8~~]7. Violation.

1) Each improperly labeled [~~industrial hemp~~]cannabinoid product shall be a separate violation of this rule.

2) [~~Industrial hemp~~]Cannabinoid products not meeting the labeling requirements shall be [~~deemed to be~~]considered misbranded.

3) [~~Industrial hemp~~]Cannabinoid products shall be considered falsely advertised if [~~it does~~]they do not meet the labeling requirements of this rule.

4) It is a violation to distribute or market a[~~n industrial hemp product~~] cannabinoid product that is not registered with the department.

5) It is a violation to distribute or market industrial hemp flower as a final product.

6) It is a violation to distribute or market a[~~n industrial hemp~~] cannabinoid product that contains greater than 0.3% THC.

7) It is a violation to distribute or market a[~~n industrial hemp~~] cannabinoid product [~~containing a cannabinoid~~]that has not been tested as required by Rule R68-29.

8) It is a violation to distribute or market a[~~n industrial hemp product containing a cannabinoid~~] cannabinoid product as a conventional food product, unless the product is exempted under Subsection R68-26-3(12)(b).

9) It is a violation to distribute or market a cannabinoid product [~~claiming a cannabinoid derived from industrial hemp~~]as a food additive.

10) It is a violation to distribute or market a cannabinoid product that is marketed toward or is appealing to children.

11) It is a violation to market a cannabinoid product as cannabis or medical cannabis.

12) It is a violation to submit a fraudulent COA to the department.

R68-26-[~~9~~]8. Violation Categories.

1) Public Safety Violations: Each person shall be fined $3,000-$5,000 per violation. This category is for violations that present a direct threat to public health or safety including:

a) industrial hemp sold to an unlicensed source;

b) industrial hemp purchased from an unlicensed source;

c) refusal to allow inspection;

d) failure to comply with labeling requirements;

e) failure to comply with testing requirements;

f) possessing, manufacturing, or distributing a cannabinoid[~~industrial hemp~~] product that a person knows or should know appeals to children; or

g) engaging in or permitting a violation of the Title 4, Chapter 41, Hemp and Cannabinoid Act that amounts to a public safety violation as described in this [~~S~~]subsection.

2) Regulatory Violations: Each person shall be fined $1,000-$5,000 per violation. This category is for violations involving this rule and other applicable state rules under Title R68 including:

a) failure to register an industrial hemp product;

b) failure to provide a certificate of analysis as required by Section R68-26-4;

c) failure to keep and maintain records;

d) engaging in or permitting a violation of Title 4, Chapter 41a, Hemp and Cannabinoid Act or this [~~R~~]rule that amounts to a regulatory violation as described in this subsection.

3) Licensing Violations: Each person shall be fined $500-$5,000 per violation. This category is for violations involving licensing requirements including:

a) engaging in or permitting a violation of this rule, other applicable rules under Title R68, or Title 4, Chapter 41, Hemp and Cannabinoid Act, that amounts to a licensing violation; or

b) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

5) The department may enhance or reduce the penalty based on the seriousness of the violation.

KEY: CBD labeling, CBD products, [~~hemp~~]cannabinoid product registration
Date of Last Change: [~~October 1, 2021~~]2022
Authorizing, and Implemented or Interpreted Law: 4-41-403(1); 4-41-402(2); 4-41-103(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-28**	**Filing ID 54735**

Agency Information

1. Department:	Agriculture and Food
Agency:	Plant Industry
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2
City, state and zip:	Taylorsville, UT 84129-2128
Mailing address:	PO Box 146500
City, state and zip:	Salt Lake City, UT 84114-6500
Contact person(s):	

Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R68-28. Cannabis Processing

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Changes are needed to implement changes made in S.B. 190 during the 2022 General Session, as well as clarify and add definitions and make other changes that will improve the Department of Agriculture and Food's (Department) ability to manage the medical cannabis program.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

Several definitions are clarified and new definitions are added in Section R68-28-2. Language is added to Section R68-28-3 clarifying the process that shall be followed in the event of ownership changes. A requirement is added to Section R68-28-4 requiring facilities to keep records of complaints received. A new section is added, R68-28-5, specifying the guidelines that must be followed if a facility is processing both industrial hemp and medical cannabis. An approval requirement is added to Section R68-28-6 related to alternative extraction methods. Specific flavor limitations are removed from Section R68-28-11. Labeling requirements are clarified in Section R68-28-13, specifically with regard to information that must be shown on the fact panel of both derivative and plant products. Finally, violations are added to Section R68-28-19.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The changes will lead to additional costs for the state, including the hiring of an additional employee to assist with reviewing labels and help implement the new labeling requirements. The Department estimates a cost of $40,000 per year since the labeling tasks would take up approximately half of the new employee's time. This cost would not be in effect until FY 2023.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There would be some fiscal impact to small businesses due to the additional labeling requirements of this rule, although this impact will be minimized because the Department will allow businesses the opportunity to use existing labels and they already do frequent package redesigns. The Department estimates that each licensee would need to invest approximately $10,000 for new label development in FY 2023. This is a total impact of $160,000 for the 16 existing licensees that qualify as small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There would be some fiscal impact to non-small businesses due to the additional labeling requirements of this rule, although this impact will be minimized because the Department will allow businesses the opportunity to use existing labels and they already do frequent package redesigns. The Department estimates that each licensee would need to invest approximately $10,000 for new label development in FY 2023. This is a total impact of $70,000 for the seven existing licensees that qualify as non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There should be no fiscal impact to other persons because they do not participate in the medical cannabis program.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There should be no change in compliance costs for affected persons because the fees charged by the Department will not change.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change will have some fiscal impact on businesses which is necessary to keep Utah medical cannabis patients safe. Craig W. Buttars, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$40,000	$40,000
Local Governments	$0	$0	$0
Small Businesses	$0	$160,000	$0
Non-Small Businesses	$0	$70,000	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$270,000**	**$40,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$(270,000)**	**$(40,000)**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 4-41a-103(5)	Subsection 4-41a-302(3)(b)(ii)	Subsection 4-41a-404(3)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	07/01/2022

R68. Agriculture and Food, Plant Industry.
R68-28. Cannabis Processing.
R68-28-1. Authority and Purpose.

1) Pursuant to Subsections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain a cannabis processing license.

R68-28-2. Definitions.

1) "Appealing to children" means:

a) has a likeness bearing resemblance to a cartoon character or fictional character; or

b) appears to imitate a food or other product that is typically marketed toward or is appealing to children.

[~~1~~]2) "Applicant" means any person or business entity who applies for a cannabis processing facility license.

[~~2a) "Cannabis" means any part of a marijuana plant.~~

~~b) "Cannabis" does not mean, for the purposes of this rule, industrial hemp.~~]

3) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Board" means the Cannabis Production Establishment Licensing Advisory Board, created in Section 4-41a-201.1.

5a) "Cannabis" means any part of a marijuana plant.

b) "Cannabis" does not mean, for the purposes of this rule, industrial hemp.

[~~5~~]6) "Cannabis concentrate" means the product of any chemical or physical process applied to cannabis biomass that concentrates or isolates the cannabinoids contained in the biomass.

7) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

[~~6) "Department" means the Utah Department of Agriculture and Food.~~]

[~~7~~]8) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

[~~8) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.~~]

9) "Cannabis derivative product" means a product made using cannabis concentrate.

10) "Cannabis fact panel" means a part of the label that contains the information described in Subsections R68-28-13(6) and R68-28-13(7).

1[~~0~~]1) "Cannabis plant product" means any portion of a cannabis plant intended to be sold by a medical cannabis pharmacy in a form that is recognizable as a portion of a cannabis plant.

1[~~1~~]2) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis concentrate; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

1[~~2~~]3) "Cannabis processing facility agent" means an individual who:

a) is an employee of a cannabis processing facility; and

b) holds a valid cannabis production establishment agent registration card.

1[~~3~~]4) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual may act as an agent.

15) "COA" means Certificate of Analysis from an independent cannabis testing laboratory.

16) "Complaint" means any negative feedback received from a medical cannabis patient or medical cannabis or industrial hemp licensee.

17) "Department" means the Utah Department of Agriculture and Food.

18) "Label" means a written, printed, or graphic display on the immediate container of a product.

19) "Labeling" means a label and other written, printed, or graphic display:

a) on the product or the product's container or wrapper; or

b) accompanying the product.

[~~14~~]20) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

21) "Product face" means the part of a label that is most likely to be displayed, presented, or shown under customary conditions of display for retail sale.

[~~15~~]22) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

R68-28-3. Cannabis Processing Facility License.

1) A cannabis processing facility license allows the licensee to receive cannabis from a cannabis production facility.

2) A Tier 1 cannabis processing facility license allows the licensee to:

a) create cannabis concentrate;

b) create cannabis derivative product; and

c) package and label final product.

3) A Tier 2 cannabis processing facility license allows the licensee to package and label cannabis and cannabis final product.

4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, copy of current Utah manufactured food establishment registration, and other applicable documents required in the application packet to be accepted and processed by the department.

5) Before approving an application, the department may contact the applicant and request additional supporting documentation or information.

6) Before issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

7) Each cannabis processing facility license shall expire one calendar year from the date of licensure.

8) An application for renewals shall be submitted to the department 30 days before expiration.

9) If the renewal application is not submitted 30 days before the expiration date, the licensee may not continue to operate.

10) A cannabis production establishment license is not transferable or assignable. If the ownership of a cannabis production establishment changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed[~~A license may not be sold or transferred except as set forth in Section R68-28-18~~].

R68-28-4. Cannabis Processing Facility Requirements.

1) A cannabis processing facility operating plan shall contain a blueprint of the facility containing the following information:

a) the square footage of the areas where cannabis is to be extracted;

b) the square footage of the areas where cannabis or cannabis products are to be packaged and labeled;

c) the square footage of the areas where cannabis products are manufactured;

d) the square footage and location of storerooms for cannabis awaiting extraction;

e) the square footage and location of storerooms for cannabis awaiting further manufacturing;

f) the area where finished cannabis and cannabis products are stored;

g) the location of toilet facilities and hand washing facilities;

h) the location of a break room and location of personal belonging lockers;

i) the location of the areas to be used for loading and unloading of cannabis and cannabis products; and

j) the total square footage of the overall cannabis processing facility.

2) A cannabis processing facility shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergency at the facility.

3) A cannabis processing facility shall have a written plan to handle potential recall and destruction of cannabis due to contamination.

4) A cannabis processing facility shall use a standardized scale that is registered with the department when cannabis is:

a) packaged for sale by weight;

b) bought and sold by weight; or

c) weighed for entry into the inventory control system.

5) A cannabis processing facility shall compartmentalize each area in the facility based on function and shall limit access between compartments.

6) A cannabis processing facility shall limit access to the compartments to the appropriate agents.

7) A cannabis processing facility creating cannabis derivative product shall develop standard operating procedures.

8) Pursuant to Subsection 4-41a-403(4)(b), a cannabis processing facility may use signage on the property that includes a logo, as long as the logo does not include:

a) unprofessional terms, slang, phrasing, or verbiage associated with the recreational use of cannabis;

b) any image bearing resemblance to a cartoon character or fictional character whose target audience is children or minors;

c) content, symbol, or imagery that the cannabis processing facility knows or should know appeals to children;

d) imagery featuring a person using the product in any way;

e) any recreationally oriented subject; or

f) any statement, design, or representation, picture, or illustration that is obscene or indecent.

9) A cannabis processing facility shall keep records of any complaints received and make those records available to the department upon request.

R68-28-5. Separation of Cannabis and Hemp Processed in a Single Facility.

1) Any facility that has both an industrial hemp processing license and a license for medical cannabis processing shall ensure physical separation of medical cannabis and industrial hemp in their facility.

2) Processing of industrial hemp material and cannabis material shall not occur on the same equipment on the same day, unless cleaned between runs.

3) Processing equipment may be considered neutral territory for hemp and cannabis if:

a) only one material is present in neutral territory at a time;

b) packaging tables in neutral territory are only used for the material being processed that day; and

c) if packaging tables are used for another material they shall be moved to the respective side of the facility.

4) If the facility uses the same machinery to process both industrial hemp and medical cannabis:

a) the machinery shall be cleaned in between hemp and cannabis days;

b) cleaning logs shall be kept and monitored by the department upon inspection of the facility; and

c) cleaning logs shall include the machines used, the date cleaned, and the name of the employee that conducted the cleaning.

5) Packaging of medical cannabis and industrial hemp may occur:

a) in a neutral zone; or

b) in a designated side of the facility.

6) Freezer separation.

a) Each licensee that processes both medical cannabis and industrial hemp shall have a separate freezer for each material.

b) Cannabis and hemp material shall be clearly labeled pursuant to the requirements of this rule and Rule R68-25 and shall be in sealed containers.

7) Storage separation.

a) Industrial hemp and medical cannabis shall be stored in separate secure locations.

b) Storage shall include storage for:

i) final product;

ii) raw material; and

iii) processed material.

8) Upon request, the licensee shall inform the department of how separation of materials is implemented, including the facility's separation procedures for raw material, extract, and final products.

R68-28-[~~5~~]6. Cannabis Extraction Requirements.

1) A cannabis processing facility shall ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least 99% purity.

2) A cannabis processing facility shall use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control each source of ignition where a flammable atmosphere is or may be present.

3) A cannabis processing facility using carbon dioxide (CO_2) gas extraction system shall use a professional grade closed loop CO_2 gas extraction system where each vessel is rated to a minimum of six hundred pounds per square inch and CO_2 shall be at least 99% purity.

4) Closed loop [~~systems~~]hydrocarbon, alcohol, or CO_2 extraction systems shall be commercially manufactured and bear a permanently affixed and visible serial number.

5) A cannabis processing facility using a closed loop system shall, upon request, provide the department with certification from a licensed engineer stating the system is:

a) safe for its intended use;

b) commercially manufactured; and

c) built to conform to recognized and generally accepted good engineering practices, such as:

i) the American Society of Mechanical Engineers (ASME);

ii) American National Standards Institute (ANSI);

iii) Underwriters Laboratories; or

iv) The American Society for Testing and Materials.

6) The certification document shall contain the signature and stamp of the certifying professional engineer and the serial number of the extraction unit being certified.

7) A cannabis processing facility may use an alternative extraction method with prior approval from the department.

[~~7~~]8) A cannabis processing facility shall use food grade ingredients to create cannabis derivative product.

[~~8~~]9) A cannabis processing facility may use heat, screens, presses, steam distillation, ice water, and other mechanical methods which do not use solvents or gasses.

[~~9~~]10) A cannabis processing facility shall ensure each solvent, with the exception of CO_2, is extracted in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

1[~~0~~]1) A cannabis establishment agent using solvents or gasses in a closed loop system shall be fully trained in the use of the system and have direct access to applicable material safety data sheets.

1[~~1~~]2) Parts per million for one gram of finished extract cannot exceed residual solvent or gas levels provided in Rule R68-29.

R68-28-[~~6~~]7. Security Requirements.

1) At a minimum, each cannabis processing facility shall have a security alarm system on each perimeter entry point and perimeter window.

2) At a minimum, a licensed cannabis processing facility shall have a complete video surveillance system:

a) with minimum camera resolution of 1280 x 720 pixels or pixel equivalent for analog; and

b) that retains footage for at least 45 days.

3) [~~e~~]Each camera shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.

4) Controlled areas included:

a) any entrances and exits, or ingress and egress vantage points;

b) any areas where cannabis or cannabis products are stored;

c) any areas where cannabis or cannabis products are extracted;

d) any areas where cannabis or cannabis products are manufactured, packaged, or labeled; and

e) any areas where cannabis waste is being moved, processed, stored, or destroyed.

5) Each camera shall record continuously.

6) For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or theft.

7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

8) Any gate or entry point must have lighting sufficient to record activity occurring in low light conditions.

9) Each visitor to a cannabis processing facility shall be required to display an identification badge issued by the facility while on the premises.

10) At any time, visitors shall be escorted by a cannabis processing facility agent.

11) A cannabis processing facility shall keep and maintain a visitors log showing:

a) the full name of each visitor entering the facility;

b) badge number issued;

[~~b~~]c) the time of arrival;

[~~c~~]d) the time of departure; and

[~~d~~]e) the purpose of the visit.

12) The cannabis processing facility shall keep the visitors log for a minimum of one year.

13) The cannabis processing facility shall make the visitor log available to the department upon request.

R68-28-[~~7~~]8. Inventory Control.

1) Each batch or lot of cannabis, cannabis derivative product, cannabis product, test sample, or cannabis waste shall have a unique identifier in the inventory control system.

2) Each batch or lot of cannabis, cannabis derivative product, cannabis product, sample, or cannabis waste shall be traceable to the lot.

3) Unique identification numbers may not be reused.

4) Each batch, lot, or sample of cannabis shall have a unique identification number that is displayed on a physical tag.

5) The tag shall be legible and placed in a position that can be clearly read.

6) The following shall be reconciled in the inventory control system at the close of each business each day:

a) date and time material containing cannabis are being transported to a cannabis production establishment or medical cannabis pharmacy;

b) each sample used for testing and the test results;

c) a complete inventory of material containing cannabis;

d) cannabis product by unit count;

e) weight per unit of product;

f) weight and disposal of cannabis waste materials;

g) the identity of who disposed of the cannabis waste and the location of the waste receptacles; and

h) theft or loss or suspected theft or loss of material containing cannabis.

7) A receiving cannabis processing facility shall document in the inventory control system any material containing cannabis received, and any difference between the quantity specified in the transport manifest and the quantity received.

8) A cannabis processing facility shall immediately upon receipt of THC extract from a licensed industrial hemp processor enter the following information into the inventory control system:

a) the amount of THC extract received;

b) the name, address, and licensing number of the industrial hemp processor;

c) the weight per unit of product received; and

d) the assigned unique identification number.

R68-28-[~~8~~]9. Cannabis Processing Facility Agents.

1) A cannabis processing facility shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the registration fee.

3) The cannabis processing facility agent registration card shall contain:

a) the full name of the agent;

b) the name of the cannabis processing establishment;

c) the job title or position of the agent; and

d) a photograph of the agent.

4) A cannabis processing facility is responsible to ensure that each agent has received:

a) the department approved training as specified in Section 4-41a-301; and

b) any task specific training as outlined in the operating plan submitted to the department.

5) A cannabis processing facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) Each cannabis production establishment agent shall have their state issued identification card in their possession to certify the information on their badge is correct.

7) Upon termination, the identification badge of an agent shall be immediately returned to the department by the cannabis processing facility.

R68-28-[~~9~~]10. Minimum Storage and Handling Requirements.

1) A cannabis processing facility shall store cannabis, cannabis concentrate, or cannabis product in a separate location from outdated, damaged, deteriorated, misbranded, or adulterated product or product whose containers or packaging have been opened or breached.

2) Cannabis, cannabis concentrate, and cannabis product shall be stored at least six inches off the ground.

3) Storage areas shall:

a) be maintained in a clean and orderly condition; and

b) be free from infestation by insects, rodents, birds, or vermin.

4) A cannabis processing facility shall:

a) track and label each cannabis plant product and cannabis concentrate;

b) ensure each unfinished product is stored in a secure location; and

c) immediately after completion of the process or at the end of the scheduled business day return to a secure location.

5) Cannabis shall be stored away from other chemicals, lubricants, pesticides, or other potential contaminants.

[~~5~~]6) If a manufacturing process cannot be completed at the end of a working day, the processor shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing cannabis inside an area or room that affords adequate security.

R68-28-1[~~0~~]1. Product Appearance and Flavor.

1) A cannabis processing facility may not produce a cannabis product that is designed to mimic a candy product.

[~~2) A cannabis processing facility may not produce a product that includes a candy-like flavor or another flavor the facility knows or should know appeals to children.~~]

[~~3) A cannabis processing facility may use only the following artificial flavors:~~

~~a) apple;~~

~~b) banana;~~

~~c) cherry;~~

~~d) grape;~~

~~e) lemon;~~

~~f) mint;~~

~~g) orange;~~

~~h) raspberry;~~

~~i) strawberry;~~

~~j) vanilla; or~~

~~k) watermelon.~~]

[~~4) Cannabis or cannabis product may keep the natural flavor provided the flavor is not candy-like or another flavor the facility knows or should know appeals to children.~~]

[~~5~~]2) A cannabis processing facility may not shape a cannabis product in any way to appeal to children.

R68-28-1[~~1~~]2. Processing of Cannabis and Cannabis Product.

1) A cannabis processing facility shall process, manufacture, package, and label cannabis and cannabis product in accordance with 21 CFR 111, "Current Good Manufacturing, Packaging, Labeling, or Holding Operation for Dietary Supplements."

2) Cannabis and cannabis product shall be packaged in child-resistant packaging in accordance with 16 CFR 1700.

3) A cannabis processing facility shall package cannabis or cannabis product in accordance with this rule and Section 4-41a-602 before transportation to a medical cannabis pharmacy.

4) Any container or packaging containing cannabis or cannabis product shall protect the product from contamination and shall not impart any toxic or deleterious substance to the cannabis or cannabis product.

5) Cannabis cultivation byproduct shall either be:

a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or

b) destroyed according to Section 4-41a-405.

6) Cannabis concentrate and product produced by cannabis processing facilities shall be tested pursuant to Rule R68-29.

7) If a cannabis product contains derivative or synthetic cannabinoids they shall be isolated to a purity of greater than 95%, as required by Subsection 4-41a-603(3).

8) A cannabis product may vary in the cannabis product's labeled cannabinoid profile by up to 10% of the indicated amount of a given cannabinoid, by weight.

R68-28-1[~~2~~]3. Labeling and Packaging of Cannabis and Cannabis Product.

[~~1) The text used on labeling shall be printed in at least 8-point font and may not be in italics.~~

~~2) A cannabis processing facility shall label cannabis and cannabis product before the sale of the cannabis or cannabis product to a medical cannabis pharmacy.~~]

1) Cannabis product labeling shall contain the following information:

a) the common or usual name of the product;

b) the name and license number of the cannabis processing facility;

c) directions for consumers to contact the department with product complaints by going to medicalcannabis.utah.gov/production;

d) for products containing THC, a warning symbol provided by the department;

e) the amount of total THC contained in the package, in milligrams; and

f) the following warning: "WARNING: Cannabis has intoxicating effects and may be addictive. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a recommending medical provider."

2) A cannabis processing facility may include a QR code on the cannabis product labeling that contains a COA from a licensed independent cannabis testing laboratory.

3) Any information appearing on the cannabis product labeling shall be:

a) displayed in any legible font, that is not a script or decorative font, provided that the lowercase letter "o" is at least one-sixteenth inch in height;

b) displayed in a color that contrasts conspicuously with its background; and

c) displayed in English, although a licensee may also choose to display required information in additional languages.

4) A cannabis processing facility shall place a cannabis fact panel on a cannabis product before the sale of the cannabis product to a medical cannabis pharmacy.

5) The cannabis fact panel shall be printed in black and white.

[~~3~~]6) The cannabis fact panel[~~ label~~] shall be securely affixed to the package[~~ and be in legible English~~].

[4]7) [~~A label~~]The cannabis fact panel for cannabis [~~flower~~]plant product shall include the following information in the order as listed:

a) the name of the cannabis cultivation facility;

[~~b) the name of the cannabis processing facility;~~

~~c) the cannabis processing establishment licensing number;~~]

[~~d~~]b) the lot number;

[~~e~~]c) the date of harvest;

[~~f~~]d) the date of final testing;

[~~g~~]e) the batch number;

[~~h~~]f) the date on which the product was packaged;

[~~i~~]g) [~~the cannabinoid profile, potency levels, and terpenoid profile as determined by the independent testing laboratory~~]the quantity of any cannabinoid listed as present on the COA;

[~~j~~]h) the expiration date; and

[~~k~~]i) the[~~quantity~~]net weight[~~ of cannabis being sold~~].

[~~5~~]8) THC potency levels for cannabis flower shall be listed as total THC in milligrams per gram.

[~~6~~]9) [~~A~~]The cannabis fact panel [~~label~~]for cannabis derivative product shall include the following information in the order listed:

[~~a) the name of the cannabis processing facility;~~

~~b) the cannabis processing facility licensing number;~~]

[~~c~~]a) the batch number;

[~~d~~]b) the date of the final testing;

[~~e~~]c) the date on which the product was packaged;

[~~f~~]d) [~~the cannabinoid profile~~]the quantity of any cannabinoid listed as present on the COA;

[~~g~~]e) the expiration date;

[~~h~~]f) the total amount of THC measured in milligrams per gram;

[~~i~~]g) a list of each ingredient and each major food allergen as identified in 21 U.S.C. 343;

h) the identity and quantity of any derivative or synthetic cannabinoid present in the product;

[~~j~~]i) the net weight of the product and number of pieces, if applicable; and

[~~k~~]j) a disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process.

10) The label of a cannabis derivative product may include a flavor name if it is not candy-like or a name the facility knows or should know appeals to children.

11) The label of a cannabis product that contains a derived or synthetic cannabinoid shall clearly display the following text : "This product contains derived or synthetic cannabinoids."

12) Any terpene listed on a cannabis product package shall be verified as present by a licensed independent cannabis testing laboratory and have its quantity listed on the fact panel.

[~~7) Each cannabis and cannabis product label shall contain the following warning: "WARNING: Cannabis has intoxicating effects and may be addictive. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a recommending medical provider."~~]

[~~8~~]13) A cannabis processing facility may include [~~a~~]the licensee's logo [~~or~~]and product brand name on the cannabis product label[~~,~~] [~~as long as it~~]that is exempt from the requirements of Subsection R68-28-13(3) and that:

a) does not exceed 20% of the product face;

b) does not obscure the information required on the label[~~.~~]; and

c) does not include:

i) unprofessional terms, slang, phrasing, or verbiage associated with the recreational use of cannabis;

ii) any image bearing resemblance to a cartoon character or fictional character whose target audience is children or minors;

iii) content, symbol, or imagery that the cannabis processing facility knows or should know appeals to children;

iv) imagery featuring a person using the product in any way;

v) any recreationally oriented subject; or

vi) any statement, design, or representation, picture, or illustration that is obscene or indecent.

[~~9~~]14) No other information, illustration, or depiction with the exception of directions for use shall appear on the [~~label~~]labeling.

15) After January 1, 2023, cannabis product packaging, logos, and brand names shall be pre-approved by the department.

R68-28-1[~~3~~]4. Transportation.

1) A printed transport manifest shall accompany each transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;

b) physical address and license number of the receiving location;

c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;

d) date and time of departure;

e) estimated date and time of arrival; and

f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.

4) A copy of the transport manifest shall be given to the receiving cannabis production establishment or medical cannabis pharmacy.

5) The receiving cannabis processing facility, independent laboratory, or medical cannabis pharmacy shall ensure that the cannabis material received is as described in the transport manifest and shall:

a) record the amounts received for each strain into the inventory control system; and

b) document any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

6) During transportation, cannabis shall be:

a) shielded from the public view;

b) secured; and

c) temperature controlled if perishable.

7) A cannabis production facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

8) Only the registered agents of the cannabis processing facility may occupy a transporting vehicle.

R68-28-1[4]5. Recall Protocol.

1) The department may initiate a recall of cannabis or cannabis products if:

a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis product;

b) evidence exists that residual solvents are present on or in cannabis or cannabis product;

c) evidence exists that harmful contaminants are present on or in cannabis or cannabis product; or

d) the department believes or has reason to believe the cannabis or cannabis product is unfit for human consumption.

2) The recall plan of a cannabis processing facility shall include, at a minimum:

a) a designation of at least one member of the staff who serves as the recall coordinator;

b) procedures for identifying and isolating product to prevent or minimize distribution to patients;

c) procedures to retrieve and destroy product; and

d) a communications plan to notify those affected by the recall.

3) The cannabis processing facility shall track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis processing facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department has authority to monitor the progress of the recall until the department declares an end to the recall.

6) A cannabis production facility shall notify the department before initiating a voluntary recall.

R68-28-1[~~5~~]6. Cannabis Waste Disposal.

1) Solid and liquid wastes generated during cannabis processing shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) Cannabis waste shall be rendered unusable before leaving the cannabis processing facility.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume or other methods approved by the department before implementation.

6) Materials used to grind and incorporate with cannabis fall into two categories:

a) compostable; or

b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

a) food waste;

b) yard waste; or

c) vegetable-based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste, including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-28-1[~~6~~]7. Change in Operation Plans.

1) A cannabis processing facility shall submit a notice, on a form provided by the department, before making any changes to:

a) ownership or financial backing of the facility;

b) the facility's name;

c) a change in location;

d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or

e) change to the number of production lines.

2) A cannabis processing facility may not implement changes to the initial approved operation plan without board approval.

3) The board shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

4) The department shall specify the reason for the denial of approval for a change to the operation plan.

5) Before the board's review of a cannabis production establishment license under Subsection 4-41a-201.1(7)(e), the cannabis production establishment shall provide the board with:

a) blueprints that show that there will be physical separation between medical cannabis and industrial hemp produced in their facility, including demonstrating storage and packaging areas on separate sides of the same room; and

b) any information requested by the board that shall allow the board to determine if the requirements of Section R68-28-5 will be met before the medical cannabis production establishment processes industrial hemp or industrial hemp products.

R68-28-1[~~7~~]8. Renewals.

1) A cannabis processing facility shall submit a notice of intent to renew and the licensing fee to the department within 30 days of license expiration.

2) If the licensing fee and intent to renew are not submitted within 30 days of license expiration, the licensee may not continue to operate.

3) The board may take into consideration significant violations issued in determining license renewals.

[~~R68-28-18. Cannabis Processing Facility License Transfer.~~

~~1) "Business entity" for purposes of this section, means any person, proprietorship, partnership, corporation, or other commercial organization.~~

~~2) The department may authorize the transfer of a cannabis processing facility license from the holder of the license to another business entity where any transaction will result in the business entity recorded on the existing cannabis processing facility license to permanently reorganize, dissolve, lapse or otherwise cease to exist as a legal business entity under the laws of the state.~~

~~3) A transfer of license ownership form, provided by the department, shall be submitted by the existing cannabis processing facility licensee to the department before the cannabis processing facility license transfer.~~

~~4) The existing cannabis processing facility licensee shall obtain department approval of the transfer of its cannabis processing facility license before the license transfer.~~

~~5) The department may deny a cannabis processing facility license transfer to any proposed transferee for any of the following reasons:~~

~~a) the business entity fails to meet the qualifications for a cannabis processing facility license; or~~

~~b) the transfer of the cannabis processing facility license would lead to disruption in the supply of cannabis to the market.~~

~~6) A business entity may not begin operations until it has received a cannabis processing facility license from the department issued in its name.~~]

R68-28-19. Violation Categories.

1) Public Safety Violations: $3,000- $5,000 per violation. This category is for violations which present a direct threat to public health or safety including:

a) cannabis sold to an unlicensed source;

b) cannabis purchased from an unlicensed source;

c) refusal to allow inspection;

d) failure to comply with testing requirements;

e) a test result for high pesticide residue in the cannabis produced or cannabis product;

f) a test result for high residual solvents, heavy metal, microbials, molds, or other harmful contaminants;

g) failure to maintain required cleanliness and sanitation standards;

h) unauthorized personnel on the premises;

i) permitting criminal conduct on the premises;

j) possessing, manufacturing, or distributing cannabis products that the person knows or should know appeal to children;[~~or~~]

k) failure to follow an approved recall protocol; or

[~~k~~]l) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, which amounts to a public safety violation as described in this subsection.

2) Regulatory Violations: $1,000-$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:

a) failure to maintain alarm and security systems;

b) failure to keep and maintain records for at least two years;

c) failure to maintain traceability;

d) failure to follow transportation requirements;

e) failure to follow the waste and disposal requirements;

f) failure to maintain separation between cannabis and hemp;

g) failure to follow labeling and packaging requirements;

h) failure to meet extraction requirements;

i) distributing a final cannabis product with an actual weight that is lower than the net weight listed on the cannabis fact panel;

[~~f~~]j) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule which amounts to a regulatory violation as described in this subsection; or

[~~g~~]k) failure to maintain standardized scales.

3) Licensing Violations: $500- $5,000 per violation. This category is for violations involving licensing requirements including:

a) an unauthorized change to the operating plan;

b) failure to notify the department of changes to the operating plan;

c) failure to notify the department of changes to financial or voting interests of greater than 2%;

d) failure to follow the operating plan as approved by the department;

e) engaging in or permitting a violation of this rule or Title 4, Chapter 41a, Cannabis Production Establishments which amounts to a licensing violation as described in this subsection; or

f) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

5) The department may enhance or reduce the penalty based on the seriousness of the violation.

KEY: cannabis processing, cannabis production establishment
Date of Last Change: [~~February 23,~~] 2022
Authorizing, and Implemented or Interpreted Law: 4-41a-103(5); 4-41a-404(3); 4-41a-701(3); 4-41a-302(3)(b)(ii); 4-2-103(1)(i); 4-41a-405(2)(b)(iv); 4-41a-801(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-29**	**Filing ID 54700**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-29. Quality Assurance Testing on Cannabis
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
A small change is needed to make the rule text consistent with the tables in this rule.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**
Language in Section R68-29-3 is clarified to make it clear that mycotoxin testing is required for cannabis derivative products, consistent with the language in Table 1 of this rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.
B) Local governments:
Local governments do not administer the program and are not regulated under the program and will not be impacted.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 4-41a-701(3)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	06/21/2022

R68. Agriculture and Food, Plant Industry.
R68-29. Quality Assurance Testing on Cannabis.
R68-29-1. Authority and Purpose.

1) Pursuant to Subsection 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product potency testing and sets limits for water activity, foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

R68-29-2. Definitions.

1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

a) pesticides;
b) heavy metals;
c) solvents;
d) microbial life;

e) toxins; or

f) foreign matter.

2) "Analyte" means a substance or chemical component that is undergoing analysis.

3) "Batch" means a quantity of:

a) cannabis concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis concentrate is used; or

c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

5) "Cannabis" means any part of the marijuana plant.

6) "Cannabinoid concentrate" means:

a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; or

b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

7) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

8) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

9) "Cannabis derivative product" means a cannabis product made using cannabis concentrate.

10) "Cannabis plant product" means any portion of a cannabis plant intended to be sold in a form that is recognizable as a portion of a cannabis plant.

11) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis concentrate; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

12) "Cannabis product" means a product that:

a) is intended for human use; and

b) contains cannabis or delta 9-tetrahydrocannabinol.

13) "CBD" means cannabidiol (CAS 13956-29-1).

14) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

15) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for the performed testing.

16) "Delta-9-tetrahydracannabinol" or "delta-9-THC" means the cannabinoid identified as CAS #1972-08-03, the primary psychotropic cannabinoid in cannabis.

17) "Department" means the Utah Department of Agriculture and Food.

18) "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert a naturally occurring cannabinoid into another cannabinoid.

19) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.

20) "Foreign matter" means:

a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient, including seeds.

21) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

22) "Industrial hemp waste" means:

a) a cannabinoid extract above 0.3% total THC derived from verified industrial hemp biomass; or

b) verified industrial hemp biomass with a total THC concentration of less than 0.3% by dry weight.

23) "Lot" means the quantity of:

a) flower from a single strain of cannabis and growing cycle produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

24) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or

b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

25) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own, used with a pesticide to aid in the application or effect of a pesticide.

26) "Sampling technician" means a person tasked with collecting a representative sample of a cannabis plant product, cannabis concentrate, or cannabis product from a cannabis production establishment who is:

a) an employee of the department;

b) an employee of an independent cannabis laboratory that is licensed by the department to perform sampling; or

c) a person authorized by the department to perform sampling.

27) "Standard operating procedure" (SOP) means a document providing detailed instruction for the performance of a task.

28) "Synthetic cannabinoid" means any cannabinoid that:

a) was chemically synthesized from starting materials other than a naturally occurring cannabinoid; and

b) is not a derivative cannabinoid.

29) "THC" means delta-9-tetrahydrocannabinol (CAS 1972-08-3).

30) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

31)(a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

(b) "THC analog" does not include the following substances or their naturally occurring acid forms:

(i) cannabichromene (CBC), CAS# 20675-51-8;

(ii) cannabicyclol (CBL), CAS# 21366-63-2;

(iii) cannabidiol (CBD), CAS# 13956-29-1;

(iv) cannabidivarol (CBDV), CAS# 24274-48-4;

(v) cannabielsoin (CBE), CAS# 52025-76-0;

(vi) cannabigerol (CBG), CAS# 25654-31-3;

(vii) cannabigerovarin (CBGV), CAS# 55824-11-8;

(viii) cannabinol (CBN), CAS# 521-35-7; or

(ix) cannabivarin (CBV), CAS# 33745-21-0.

32) "Total CBD" means the sum of the determined amounts of CBD and CBDA.

33) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

34) "Unit" means each individual portion of an individually packaged product.

35) "Water activity" is a dimensionless measure of the water present in a substance that is available to microorganisms; calculated as the partial vapor pressure of water in the substance divided by the standard state partial vapor pressure of pure water at the same temperature.

R68-29-3. Required Cannabis, Cannabis Product, and Industrial Hemp Waste Tests.

1) Before the transfer of cannabis biomass from a cannabis cultivation facility to a cannabis processing facility, the cultivation facility shall make a declaration to the department that the biomass to be transferred is either a cannabis plant product or a cannabis cultivation byproduct.

2) A representative sample of each batch or lot of cannabis plant product shall be tested by an independent cannabis testing laboratory to determine:

a) the water activity of the sample;

b) the amount of total THC, total CBD, and any THC analog know to be present in the sample; and

c) the presence of adulterants in the sample, as specified in Table 1.

3) Required testing shall be performed either:

a) Before the transfer of the cannabis plant product to a cannabis processing facility; or

b) following the transfer of the cannabis plant product to a cannabis processing facility.

4) If cannabis plant product is tested before being transferred to a cannabis processing facility, repeat testing for microbial contaminants and foreign matter shall be performed following the transfer.

5) Cannabis cultivation byproduct shall either be:

a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or

b) destroyed pursuant to Section 4-41a-405.

6) Before its incorporation into a cannabis derivative product, cannabis concentrate shall be tested by an independent cannabis testing laboratory to determine:

a) the amount of total THC, total CBD, and any THC analog known to be present in the sample; and

b) the presence of adulterants in the sample, as specified in Table 1.

c) Any derivative or synthetic cannabinoids present in the cannabis concentrate shall be isolated to a purity of greater than 95%, with a 5% margin of error, as determined by an independent cannabis testing laboratory using liquid chromatography-mass spectroscopy or an equivalent method.

7) Before the transfer of a cannabis product to a medical cannabis pharmacy a representative sample of the product shall be tested by an independent cannabis testing laboratory to determine:

a) the water activity of the sample, as determined applicable by the department;

b) the quantity of any cannabinoid or terpene to be listed on the product label; and

c) the presence of adulterants in the sample, as specified in Table 1.

8) Testing results for cannabis concentrate may be applied to cannabis product derived therefrom, provided that the processing steps used to produce the product are unlikely to change the results of the test, as determined by the department.

9) Mycotoxin testing of a cannabis plant product[~~, cannabis concentrate~~], or cannabis product may be required if the department has reason to believe that mycotoxins may be present.

10) Mycotoxin testing shall be required for cannabis concentrate.

1[~~0~~]1) A cannabis plant product, cannabis concentrate, or cannabis product that fails any of the required adulterant testing standards may be remediated by a cannabis cultivation facility or cannabis processing facility after submitting and gaining approval for a remediation plan from the department.

1[~~1~~]2) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.

1[~~2~~]3) A remediation plan shall be carried out and the cannabis plant product or cannabis concentrate shall be prepared for resampling within 60 days of department approval of the remediation plan.

1[~~3~~]4) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.

1[~~4~~]5) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed pursuant to Section 4-41a-405.

1[~~5~~]6) If test results cannot be retained in the Inventory Control System, the laboratory shall:

a) keep a record of test results;

b) issue a COA for required tests; and

c) [~~K~~]keep a copy of the COA on the laboratory premises.

1[~~6~~]7) Plant product that has been classified as industrial hemp waste may enter the state and be held by a medical cannabis cultivation facility until required testing is completed by an independent cannabis testing laboratory. A cannabis cultivation facility may not take ownership of the industrial hemp plant product until testing requirements have been met.

1[~~7~~]8) Industrial hemp waste purchased by a cannabis cultivation facility in the form of a plant product or a concentrate must meet department cannabis testing standards as determined by an independent cannabis testing laboratory before its transfer to a cannabis cultivation facility.

1[~~8~~]9) Industrial hemp waste that is transferred to a cannabis cultivation facility will be considered cannabis for all testing and regulatory purposes of the department.

[~~TABLE 1~~
~~Required Tests by Sample Type~~

~~Test~~	~~Cannabis Plant Product~~	~~Cannabis Concentrate~~	~~Cannabis Product~~
~~Moisture Content~~	~~Required~~	~~X~~	~~X~~
~~Water Activity~~	~~Required~~	~~X~~	~~X~~
~~Foreign Matter~~	~~Required~~	~~Required~~	~~Required~~
~~Potency~~	~~Required~~	~~Required~~	~~Required~~
~~Microbial~~	~~Required~~	~~Required~~	~~Required~~
~~Pesticides~~	~~Required~~	~~Required~~	~~Required~~
~~Residual Solvents~~	~~X~~	~~Required~~	~~Required~~
~~Heavy Metals~~	~~Required~~	~~Required~~	~~Required~~
~~Mycotoxins~~	~~X~~	~~Required~~	~~X~~]

TABLE 1
Required Test by Sample Type

Test	Cannabis Plant Product	Cannabis Concentrate	Cannabis Product
Moisture Content	Required	X	X
Water Activity	Required	X	X
Foreign Matter	Required	Required	Required
Potency	Required	Required	Required
Microbial	Required	Required	Required
Pesticides	Required	Required	Required
Residual Solvents	X	Required	Required
Heavy Metals	Required	Required	Required

R68-29-4. Sampling Cannabis and Cannabis Products.

1) The entity that requests testing of a cannabis plant product lot or cannabis concentrate batch, or cannabis product batch shall make the entirety of the lot or batch available to the sampling technician.

2) The lot or batch being sampled shall be contained in a single location and physically separated from other lots or batches.

3) The sample shall be collected by a sampling technician who is unaffiliated with the entity that requested testing of the cannabis lot or cannabis product batch unless an exception is granted by the department.

4) The owner of the cannabis lot or cannabis product batch and any of their employees shall not assist in the selection of the sample.

5) The sampling technician shall collect the representative sample in a manner set forth in a SOP, that is ISO 17025 compliant, maintained by the laboratory that will perform the testing.

6) When collecting the representative sample, the sampling technician shall:

a) use sterile gloves, instruments, and a glass or plastic container to collect the sample;

b) place tamper proof tape on the container; and

c) appropriately label the sample pursuant to Section R68-30-6.

7) For cannabis plant product lots the minimum representative sample shall be taken according to the following schedule:

a) 10 subunits with an average weight of one gram each for lots weighing 5 kilograms or less;

b) 16 subunits with an average weight of one gram each for lots weighing 5.01-9 kilograms;

c) 22 subunits with an average weight of one gram each for lots weighing 9.01-14 kilograms;

d) 28 subunits with an average weight of one gram each for lots weighing 14.01-18 kilograms;

e) 32 subunits with an average weight of one gram each for lots weighing 18.01-23 kilograms.

8) For cannabis concentrate the minimum representative sample shall be taken according to the following schedule:

a) 10 mL or grams for batches of one liter or kilogram or less; or

b) 20 mL or grams for batches of four liters or kilograms or less.

9) For cannabis products in their final product form the following minimum number of sample units must be taken, the combined total weight of which must be at least 10 grams, not including packaging materials:

a) four units for a sample product batch with 5-500 products;

b) six units for a sample product batch with 501-1000 products;

c) eight units for a sample product batch with 1,001-5,000 products; and

d) ten units for a sample product batch with 5,001-10,000 products.

10) Additional material may be included in the representative sample if the material is necessary to perform the required testing.

R68-29-5. Moisture Content Testing and Water Activity Standards.

1) The moisture content of a sample and related lot of cannabis shall be reported on the COA as a mass over mass percentage.

2) A sample and related lot of cannabis fail quality assurance testing if the water activity of the representative sample is found to be greater than 0.65.

3) A sample and related cannabis or cannabinoid product batch intended for human consumption fail quality assurance testing if the water activity of the representative sample is greater than 0.65, unless water is a component of the product formulation and is listed as an ingredient.

R68-29-6. Foreign Matter Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing if:

a) the sample contains foreign matter visible to the unaided human eye;

b) the sample is found to contain microscopic foreign matter considered to be harmful or estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

c) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

R68-29-7. Potency Testing.

1) A lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall have its potency determined and listed on a COA as total THC, total CBD, and the total concentration of any THC analog known to be present.

R68-29-8. Microbial Standards.

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table 2.

2) Each sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall be tested for total aerobic microbial count and total combined yeast and mold. The specific pathogens listed in Table 2 may be tested for at the discretion of the department.

[~~TABLE 2~~
~~Microbial Analytes and Action Levels~~

~~Material~~	~~Microbial Limit Requirement (cfu)~~
~~Flower~~	~~Total Aerobic Microbial Count ≤100,000~~
	~~Absence of E. Coli and Salmonella spp.~~
	~~Absence of Aspergillus~~
~~Concentrated oil~~	~~Total Aerobic Microbial Count ≤10,000~~
~~Wax~~	~~Total Combined Yeast and Mold Count ≤1,000~~
~~Resin~~	~~Absence of STEC~~
	~~Absence of Pseudomonas~~
	~~Absence of Staph~~
~~Tablet~~	~~Total Aerobic Microbial Count ≤10,000~~
~~Capsule~~	~~Total Combined Yeast and Mold Count ≤1,000~~
~~Liquid Suspension~~	~~Absence of E. Coli and Salmonella spp.~~
~~Gelatinous cube~~	~~Absence of Staph~~
~~Transdermal~~	~~Total Aerobic Microbial Count ≤100~~
	~~Total Yeast and Mold ≤100~~
	~~Absence of Pseudomonas~~
	~~Absence of Staph~~
	~~Absence of E. coli~~]

TABLE 2
Microbial Analytes and Action Levels

Material	Microbial Limit Requirement (cfu)
Flower	Total Aerobic Microbial Count ≤100,000
	Absence of E. Coli and Salmonella spp.
	Absence of Aspergillus
Concentrated oil	Total Aerobic Microbial Count ≤10,000
Wax	Total Combined Yeast and Mold Count ≤1,000
Resin	Absence of STEC
	Absence of Pseudomonas
	Absence of Staph
Tablet	Total Aerobic Microbial Count ≤10,000
Capsule	Total Combined Yeast and Mold Count ≤1,000
Liquid Suspension	Absence of E. Coli and Salmonella spp.
Gelatinous Cube	Absence of Staph
Transdermal	Total Aerobic Microbial Count ≤100
	Total Yeast and Mold ≤100
	Absence of Pseudomonas
	Absence of Staph
	Absence of E. coli

R68-29-9. Pesticide Standards.

1) Only pesticides allowed by the department may be used in the cultivation of cannabis.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under Subsection R68-29-5(1) and is above the action levels provided in Subsection R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth in Table 3.

[~~TABLE 3~~
~~Pesticide Analytes and Action Levels~~

~~Analyte~~	~~Chemical Abstract Service (CAS) Registry number~~	~~Action Level ppm~~
~~Abamectin~~	~~71751-41-2~~	~~0.5~~
~~Acephate~~	~~30560-19-1~~	~~0.4~~
~~Acequinocyl~~	~~57960-19-7~~	~~2~~
~~Acetamiprid~~	~~135410-20-7~~	~~0.2~~
~~Aldicarb~~	~~116-06-3~~	~~0.4~~
~~Azoxystrobin~~	~~131860-33-8~~	~~0.2~~
~~Bifenazate~~	~~149877-41-8~~	~~0.2~~
~~Bifenthrin~~	~~82657-04-3~~	~~0.2~~
~~Boscalid~~	~~188425-85-6~~	~~0.4~~
~~Carbaryl~~	~~63-25-2~~	~~0.2~~
~~Carbofuran~~	~~1563-66-2~~	~~0.2~~
~~Chlorantraniliprole~~	~~500008-45-7~~	~~0.2~~
~~Chlorfenapyr~~	~~122453-73-0~~	~~1~~
~~Chlorpyrifos~~	~~2921-88-2~~	~~0.2~~
~~Clofentezine~~	~~74115-24-5~~	~~0.2~~
~~Cyfluthrin~~	~~68359-37-5~~	~~1~~
~~Cypermethrin~~	~~52315-07-8~~	~~1~~
~~Daminozide~~	~~1596-84-5~~	~~1~~
~~DDVP (Dichlorvos)~~	~~62-73-7~~	~~0.1~~
~~Diazinon~~	~~333-41-5~~	~~0.2~~
~~Dimethoate~~	~~60-51-5~~	~~0.2~~
~~Ethoprophos~~	~~13194-48-4~~	~~0.2~~
~~Etofenprox~~	~~80844-07-1~~	~~0.4~~
~~Etoxazole~~	~~153233-91-1~~	~~0.2~~
~~Fenoxycarb~~	~~72490-01-8~~	~~0.2~~
~~Fenpyroximate~~	~~134098-61-6~~	~~0.4~~
~~Fipronil~~	~~120068-37-3~~	~~0.4~~
~~Flonicamid~~	~~158062-67-0~~	~~1~~
~~Fludioxonil~~	~~131341-86-1~~	~~0.4~~
~~hexythiazox~~	~~78587-05-0~~	~~1~~

~~imazalil~~	~~35554-44-0~~	~~0.2~~
~~Imidacloprid~~	~~138261-41-3~~	~~0.4~~
~~Kresoxim-methyl~~	~~143390-89-0~~	~~0.4~~
~~Malathion~~	~~143390-89-0~~	~~0.2~~
~~Metalaxyl~~	~~57837-19-1~~	~~0.2~~
~~Methiocarb~~	~~2032-65-7~~	~~0.2~~
~~Methomyl~~	~~16752-77-5~~	~~0.4~~
~~Methyl parathion~~	~~298-00-0~~	~~0.2~~
~~MGK-264~~	~~113-48-4~~	~~0.2~~
~~Myclobutanil~~	~~88671-89-0~~	~~0.2~~
~~Naled~~	~~300-76-5~~	~~0.5~~
~~Oxamyl~~	~~23135-22-0~~	~~1~~
~~Paclobutrazol~~	~~76738-62-0~~	~~0.4~~
~~Permethrins~~	~~52645-53-1~~	~~0.2~~
~~Phosmet~~	~~732-11-6~~	~~0.2~~
~~Piperonyl_butoxide~~	~~51-03-6~~	~~2~~
~~Prallethrin~~	~~23031-36-9~~	~~0.2~~
~~Propiconazole~~	~~60207-90-1~~	~~0.4~~
~~Propoxur~~	~~114-26-1~~	~~0.2~~
~~Pyrethrins~~	~~8003-34-7~~	~~1~~
~~Pyridaben~~	~~96489-71-3~~	~~0.2~~
~~Spinosad~~	~~168316-95-8~~	~~0.2~~
~~Spiromesifen~~	~~283594-90-1~~	~~0.2~~
~~Spirotetramat~~	~~203313-25-1~~	~~0.2~~
~~Spiroxamine~~	~~118134-30-8~~	~~0.4~~
~~Tebuconazole~~	~~80443-41-0~~	~~0.4~~
~~Thiacloprid~~	~~111988-49-9~~	~~0.2~~
~~Thiamethoxam~~	~~153719-23-4~~	~~0.2~~
~~Trifloxystrobin~~	~~141517-21-7~~	~~0.2~~]

TABLE 3
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl_butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2

Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

5) Pyrethrins should be measured as the cumulative residues of pyrethrin I (CAS 121-21-1), pyrethrin II (CAS 121-29-9), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

6) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

R68-29-10. Residual Solvent Standards.

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 4 unless the solvent is:

a) a component of the product formulation;

b) listed as an ingredient; and

c) generally considered to be safe for the intended form of use.

[~~TABLE 4~~
~~List of Solvents and Action Levels~~

~~Solvent~~	~~Chemical Abstract Service (CAS)Registry number~~	~~Action level ppm~~
~~1,2 Dimethoxyethane~~	~~110-71-4~~	~~100~~
~~1,4 Dioxane~~	~~123-9~~	~~380~~
~~1-Butanol~~	~~71-36-3~~	~~5,000~~
~~1-Pentanol~~	~~71-41-0~~	~~5,000~~
~~1-Propanol~~	~~71-23-8~~	~~5,000~~
~~2-Butanol~~	~~78-92-2~~	~~5,000~~
~~2-Butanone~~	~~78-93-3~~	~~5,000~~
~~2-Ethoxyethanol~~	~~110-80-5~~	~~160~~
~~2-methylbutane~~	~~78-78-4~~	~~5,000~~
~~2-Propanol (IPA)~~	~~67-63-0~~	~~5,000~~
~~Acetone~~	~~67-64-1~~	~~5,000~~
~~Acetonitrile~~	~~75-05-8~~	~~410~~
~~Benzene~~	~~71-43-2~~	~~2~~
~~Butane~~	~~106-97-8~~	~~5,000~~
~~Cumene~~	~~98-82-8~~	~~70~~
~~Cyclohexane~~	~~110-82-7~~	~~3,880~~
~~Dichloromethane~~	~~75-09-2~~	~~600~~
~~2,2-dimethylbutane~~	~~75-83-2~~	~~290~~
~~2,3-dimethylbutane~~	~~79-29-8~~	~~290~~
~~1,2-dimethylbenzene~~	~~95-47-6~~	~~See Xylenes~~
~~1,3-dimethylbenzene~~	~~108-38-3~~	~~See Xylenes~~
~~1,4-dimethylbenzene~~	~~106-42-3~~	~~See Xylenes~~
~~Dimethyl sulfoxide~~	~~67-68-5~~	~~5,000~~
~~Ethanol~~	~~64-17-5~~	~~5,000~~
~~Ethyl acetate~~	~~141-78-6~~	~~5,000~~
~~Ethylbenzene~~	~~100-41-4~~	~~See Xylenes~~
~~Ethyl ether~~	~~60-29-7~~	~~5,000~~
~~Ethylene glycol~~	~~107-21-1~~	~~620~~
~~Ethylene Oxide~~	~~75-21-8~~	~~50~~
~~Heptane~~	~~142-82-5~~	~~5,000~~
~~n-Hexane~~	~~110-54-3~~	~~290~~
~~Isopropyl acetate~~	~~108-21-4~~	~~5,000~~
~~Methanol~~	~~67-56-1~~	~~3,000~~
~~Methylpropane~~	~~75-28-5~~	~~5,000~~
~~2-Methylpentane~~	~~107-83-5~~	~~290~~
~~3-Methylpentane~~	~~96-14-0~~	~~290~~
~~N,N-dimethylacetamide~~	~~127-19-5~~	~~1,090~~
~~N,N-dimethylformamide~~	~~68-12-2~~	~~880~~
~~Pentane~~	~~109-66-0~~	~~5,000~~
~~Propane~~	~~74-98-6~~	~~5,000~~
~~Pyridine~~	~~110-86-1~~	~~100~~
~~Sulfolane~~	~~126-33-0~~	~~160~~
~~Tetrahydrofuran~~	~~109-99-9~~	~~720~~
~~Toluene~~	~~108-88-3~~	~~890~~
~~Xylenes~~	~~1330-20-7~~	~~2,170~~]

TABLE 4
List of Solvents and Action Levels

Solvent	Chemical Abstract Service	Action level
	(CAS)Registry number	Ppm
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5,000
1-Pentanol	71-41-0	5,000
1-Propanol	71-23-8	5,000
2-Butanol	78-92-2	5,000
2-Butanone	78-93-3	5,000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5,000
2-Propanol (IPA)	67-63-0	5,000
Acetone	67-64-1	5,000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5,000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3,880

Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5,000
Ethanol	64-17-5	5,000
Ethyl acetate	141-78-6	5,000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5,000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5,000
n-Hexane	110-54-3	290
Isopropyl acetate	290	5,000
Methanol	67-56-1	3,000
Methylpropane	75-28-5	5,000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1,090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5,000
Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

2) Xylenes is a combination of the following:
a) 1,2-dimethylbenzene;
b) 1,3-dimethylbenzene;
c) 1,4-dimethylbenzene; and
d) ethyl benzene.

R68-29-11. Heavy Metal Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for heavy metals if the results exceed the limits provided in Table 5.

[~~TABLE 5~~
~~Heavy Metals~~

~~Metals Natural Health Products Acceptable limits in parts per million~~
~~Arsenic <2~~
~~Cadmium <0.82~~
~~Lead <1.2~~
~~Mercury <0.4~~]

TABLE 5 Heavy Metals	
Metals	Natural Health Products Acceptable
	limits in parts per million
Arsenic	≤2
Cadmium	≤.82
Lead	≤1.2
Mercury	≤.4

R68-29-12. Mycotoxin Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in Table 6.

[~~TABLE 6~~
~~Mycotoxin~~

~~Test Specification~~
~~The total of~~
~~Aflatoxin B1,~~
~~Aflatoxin B2,~~
~~Aflatoxin G1, and~~
~~Aflatoxin G2 <20 ppb of substance~~
~~Ochratoxin A. <20 ppb of substance~~]

TABLE 6 Mycotoxin	
Test	Specification
The Total of	
Aflatoxin B1,	
Aflatoxin B2,	
Aflatoxin G1, and	
Aflatoxin G2	<20 ppb of substance

Ochratoxin A.	<20 ppb of substance

KEY: cannabis testing, quality assurance, cannabis laboratory
Date of Last Change: [~~February 23,~~] 2022
Authorizing, and Implemented or Interpreted Law: 4-41a-701(3)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R277-125**	**Filing ID 54716**

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R277-125. Small School District Capital Projects

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Rule R277-125 is being enacted due to the passage of H.B. 475, Use of Public Education Stabilization Account One-time Funding, in the 2022 General Session.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This new rule establishes a process for school districts to submit proposals for funding for capital development projects, including: 1) the Capital Projects Evaluation Panel's review, prioritization, and recommendations to the Board; 2) the Board's consideration and approval, if applicable, of proposed capital development projects; and 3) management of Capital Projects Evaluation Panel processes and administration.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This proposed rule is not expected to have fiscal impact on state government revenues or expenditures. This rule outlines procedures for local education agencies (LEAs) to apply for new funding appropriated by the legislature. It does not impact the Utah State Board of Education (USBE) or other state agency budgets.

B) Local governments:

This proposed rule is not expected to have fiscal impact on local governments' revenues or expenditures. It simply outlines procedures for qualifying LEAs to apply for the funds. It does not make a determination as to which LEAs qualify; the statute already makes that determination. Thus, this rule does not independently impact LEA budgets or other local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed rule is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule only impacts USBE and LEAs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only impacts USBE and LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. This rule outlines procedures for new legislative funding but does not add compliance costs or requirements.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this proposed rule is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-10-102

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/28/2022

R277. Education, Administration.
R277-125. Small School District Capital Projects.
R277-125-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-10-102, which requires the Board to make rules to establish a process for school districts to submit proposals for funding for capital development projects under Title 53F, Chapter 10, State Funding - Capital Projects.

(2) The purpose of this rule is to establish a process for school districts to submit proposals for funding for capital development projects, including:

(a) the Capital Projects Evaluation Panel's review, prioritization, and recommendations to the Board;
(b) the Board's consideration and approval, if applicable, of proposed capital development projects; and
(c) management of Capital Projects Evaluation Panel processes and administration.

R277-125-2. Definitions.
(1) "Capital development project" or "project" means the same as that term is defined in Section 53F-10-101.
(2) "Capital Projects Evaluation Panel" or "panel" means the same as that term is defined in Section 53F-10-101.
(3) "Eligible school district" means the same as that term is defined in Section 53F-10-101.

R277-125-3. Superintendent Duties and Support for Capital Development Proposal Process.
(1)(a) The Superintendent shall prepare an application for an eligible school district to submit a proposal to the Capital Projects Evaluation Panel for funding for a capital development project.
(b) The application described in Subsection (2)(a) shall include a requirement for an eligible school district to provide at least the following information as part of the eligible school district's proposal:
(i) a cost analysis and estimate for the project;
(ii) a proposed timeline for the project;
(iii) if applicable, the source of the eligible school district's matching funds;
(iv) the LEA's capital local levy imposed for the most recent fiscal year; and
(v) narrative describing how the project will meet the eligible school district's capital needs.
(2) As described in Section 53F-10-201, the Superintendent and staff shall participate on the panel and provide staff support.
(3) The Superintendent shall provide the panel's recommendations for any project described in Subsection R277-125-4(3)(b) that is $2 million or more to the Board by January 10 each year for the Board's evaluation and approval.
(4) For a project described in Subsection R277-125-4(3)(b) that is less than $2 million, the Superintendent shall:
(a) evaluate the panel's recommendations described in Subsection R277-125-4(3)(b);
(b) approve and notify an eligible school district of an approved capital development project; and
(c) provide a report to the Board of the Superintendent's approvals described in Subsection (4)(b).
(5) Subject to the amounts described in Section 53F-10-301 and approval by the Board if applicable, the Superintendent shall distribute funds to an eligible school district with an approved project by March 1.

R277-125-4. Eligible School District Application Requirements -- Panel Review and Consideration of Project Proposals.
(1) On or before November 1 each year, an eligible school district may submit a capital development project proposal to the Superintendent using the application described in Subsection R277-124-3(1) for the Capital Projects Evaluation Panel's consideration.
(2) To perform the duties described in Section 53F-10-202, the panel shall meet quarterly or as needed.
(3) The panel shall:
(a) use the criteria described in Subsection 53F-10-202(1) to evaluate and prioritize capital development project proposals; and
(b) provide recommendations for proposals that the panel recommends be approved to the Superintendent by December 15.
(4) The panel may recommend funds be distributed to an eligible school district for a loan in lieu of a distribution of capital funding for a project as described in Section 53F-10-302.

R277-125-5. Eligible School District Use of Funds.
(1) An eligible school district shall use funds distributed under Section 53F-7-202 and this rule by June 30, 2025.
(2) An LEA shall return any funds distributed under Section 53F-7-202 and this rule on or before October 1, 2025 if the eligible school district does not expend those funds by June 30, 2025.

KEY: small school district; capital; funding
Date of Last Change: 2022
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-10-102

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-309**	**Filing ID 54710**

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-309. Appropriate Licensing and Assignment of Teachers
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
In S.B. 103, passed in the 2022 General Session, the Legislature required all charter school special education directors to be appropriately licensed. The proposed

amendments clarify what license areas of concentration meet this requirement.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The proposed amendments specify what license areas of concentration are required for a charter school's special education director.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have fiscal impacts on state government revenues or expenditures. This rule does not impact the Utah State Board of Education (USBE) or other state agency budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. It does require charter local education agencies (LEAs) to have a licensed special education director. This should not have a measurable fiscal impact for LEAs.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only affects LEAs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only affects LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. LEAs should not incur more costs but may spend more time looking for qualified candidates. Educators have many paths to licensure and should not incur additional costs on an individual basis.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses.
Sydnee Dickson, Superintendent

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(2)(a)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/28/2022

R277. Education, Administration.
R277-309. Appropriate Licensing and Assignment of Teachers.
R277-309-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-6-201(2)(a), which authorizes the Board to rank, endorse, or classify licenses.

(2) The purpose of this rule is to provide criteria for:

(a) local school boards to employ educators in appropriate assignments;

(b) the Board to provide state funding to local school boards for appropriately qualified and assigned staff; and

(c) the Board and local school boards to satisfy the requirements of ESEA for local school boards to receive federal funds.

R277-309-2. Definitions.

(1) "Co-teaching" means the instructional arrangement in which a general education teacher and a special education teacher deliver core instruction along with specialized instruction, as needed, to a diverse group of students in a single instructional space or class.

(2) "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

(3) "Educator license" means an associate, professional, or LEA-specific license issued by the Superintendent under Rule R277-301.

(4) "Elementary setting" means an instructional model where students typically have a single class with a single teacher primarily responsible for instruction in all core standards established in Rule R277-700.

(5) "License areas of concentration" has the same meaning as described in Section R277-301-2, including elementary education, secondary education, special education, and career and technical education.

(6) "License endorsement" or "endorsement" has the same meaning as described in Section R277-301-2, including special education mild/moderate, special education severe disabilities, mathematics, English language arts, and dance.

(7) "Secondary setting" means an instructional model where students typically rotate among classes taught by multiple teachers that are considered subject matter experts, primarily responsible for instruction in the core standards in an area as established by the Board in Rule R277-700.

R277-309-3. Required Licensing.

(1) All teachers in public schools shall hold a current educator license along with appropriate license areas of concentration and endorsements that is not suspended or revoked by the Board under Section 53E-6-604.

(2) An LEA shall receive assistance from the Superintendent to the extent of resources available to have all teachers hold a professional license, license area, and endorsement in all areas in which the teacher is assigned.

(3) An LEA shall only hire a teacher who:

(a) holds a current educator license; or

(b) is in the process of becoming fully licensed and endorsed.

(4) In accordance with Section 53E-3-401, if an LEA hires an educator without appropriate licensure, the Superintendent may recommend that the Board withhold the following until the LEA's educators are appropriately licensed:

(a) LEA salary supplement funds under Section 53F-2-405 and Rule R277-110; and

(b) Educator quality funds under Subsection 53F-2-305(2) and Rule R277-486.

R277-309-4. Appropriate Licenses, License Areas of Concentration, and Endorsements.

(1) An educator assigned to teach a class in kindergarten through grade 3 shall hold a current educator license with:

(a) an early childhood license area of concentration;

(b) an elementary license area of concentration; or

(c) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(2) An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current educator license with:

(a) an elementary license area of concentration; or

(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(3) An elementary content specialist in Fine Arts or Physical Education shall hold a current educator license with an elementary or secondary license area of concentration with the appropriate K-12 endorsement.

(4) An elementary content specialist in reading or English as a Second Language shall hold a current educator license with an elementary or secondary license area of concentration with the appropriate endorsement.

(5) An elementary content specialist in any content area not listed in Subsections (3) and (4) shall hold a current educator license with an elementary, secondary, special education, or deaf education license area of concentration.

(6) An educator assigned to teach a class in grade 6 in a secondary setting shall hold a current educator license with:

(a) an elementary license area of concentration;

(b) a secondary license area of concentration with the appropriate endorsement for all assigned courses; or

(c) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education license area of concentration.

(7) An educator assigned to teach a class in grade 7 or grade 8 in a secondary setting shall hold a current educator license with:

(a) an elementary or secondary license area of concentration with the appropriate endorsement for all assigned courses; or

(b) for an educator assigned to teach deaf and hard of hearing students, a deaf education license area of concentration with the appropriate endorsement for all assigned courses.

(8) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current educator license with:

(a) a secondary or a career and technical education license area of concentration with the appropriate endorsement for all assigned courses; or

(b) for an educator assigned to teach deaf and hard of hearing students, a deaf education license area of concentration with the appropriate endorsement for all assigned courses.

(9) A general education teacher in a co-teaching setting shall hold:

(a) a current educator license;

(b) an appropriate license area of concentration; and

(c) an endorsement appropriate for the course.

(10)(a) An educator assigned to serve or teach a class of students with disabilities shall hold a current educator license with a special education license area of concentration and special education endorsement; and

(b) If an educator is the teacher of record of secondary mathematics for students with disabilities, the educator shall also hold the appropriate endorsement for the course, unless in a co-teaching setting with a general educator who is properly licensed and endorsed.

(c) A special education teacher in a co-teaching setting shall hold a special education license area of concentration and special education endorsement.

(11) An educator assigned to serve preschool-aged students with disabilities shall hold a current educator license with a preschool special education license area of concentration.

(12) An educator assigned to serve deaf and hard of hearing students shall hold:

(a) a current educator license with a special education license area of concentration and deaf and hard of hearing endorsement; or

(b) a deaf education license area of concentration.

(13) An educator assigned to provide student support services as defined in Rule R277-306 shall hold a current educator license with the appropriate support service license area of concentration.

(14) An educator assigned as a school-based or LEA-based specialist shall hold a current educator license with the appropriate license area of concentration and endorsement as defined by the LEA.

(15) An educator assigned as a principal or vice principal in a school district shall hold a current educator license and a school leadership license area of concentration.

(16) A special education director for a charter school shall hold a current educator license with a license area of concentration in one of the following areas consistent with Section 53G-5-407:

(a) special education;

(b) preschool special education;

(c) speech language pathologist; or

(d) school psychologist.

([~~16~~]17) An educator assigned in any other position that requires an educator license, as defined by the LEA, shall hold a current educator license with the appropriate license area of concentration and endorsement as defined by the district.

([~~17~~]18) An educator assigned in an administrative position in a charter school is exempt from Subsections (14) and (15) consistent with Section 53G-5-405.

([~~18~~]19) Notwithstanding Subsection R277-309-3(1), an individual may hold a school social work assignment in an LEA without a school social worker license area of concentration.

KEY: educator, license, assignment
Date of Last Change: 2022[~~August 12, 2021~~]
Notice of Continuation: June 4, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-6-201(2)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-415**	**Filing ID 54711**

Agency Information

1. Department:	Education
Agency:	Administration

Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R277-415. School Nurses Matching Funds

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Rule R277-415 is being amended to make conforming changes related to H.B. 114 passed in the 2022 General Session.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This rule is being amended to update the definition of "school nurse" to adhere to the newly created definition in code by H.B. 114 (2022) and remove an old definition no longer needed due to the more comprenshive one now in state code.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule change simply updates the definition for school nurses and therefore, will not impact budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The rule changes update the definition of school nurses and will not impact local education agencies (LEAs) budgets or allocations.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. There are no impacts on small businesses, just a definition update that applies to the Utah State Board of Education (USBE) and LEAs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It only applies to USBE and LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. There are no compliance costs associated with changing the definition of school nurses. It simply provides clarity for LEAs.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses.
Sydnee Dickson, Superintendent

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-519

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/28/2022

R277. Education, Administration.
R277-415. School Nurses Matching Funds.
R277-415-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-2-519, which requires the Board to distribute grant money to LEAs for school nurses.

(2) The purpose of this rule is to provide rules for awarding of matching funds under Section 53F-2-519.

R277-415-2. Definitions.

(1) "Advanced Practice Registered Nurse" or "APRN" is a nurse practitioner who may practice as a school nurse, or in a supervisory role.

(2) "Health aid or clerk" means an unlicensed assistive person who must work under the supervision of an RN.

(3) "Licensed Practical Nurse" or "LPN" means a nurse who may only assist or work under the supervision of a registered nurse or a medical doctor.

(4) "Physician" means a licensed doctor with a doctorate in medicine or osteopathic medicine from an accredited college or university.

[~~(5) "Registered nurse" or "RN" is a licensed practicing nurse with a degree in nursing from an accredited college or university.~~]

([~~6~~]5) "[~~Typical s~~]School nurse" means the same as term is defined in Section 53E-1-102.[~~ a licensed RN specializing in school nursing that serves as a health care expert in a school~~].

R277-415-3. Appropriation for School Nurses.

(1) The Superintendent shall award an appropriation for school nurses to LEAs subject to the requirements of this Rule R277-415 and Section 53F-2-519.

(2) An LEA that seeks an appropriation for school nurses under this [~~R~~]rule shall submit an application for school nurse funds every three years.

(3) The Superintendent shall determine the amount of an LEA's three year allocation taking into account:

(a) an LEA's student enrollment;

(b) an LEA's ability to match funds as provided in this Section R277-415-3;

(c) the percentage of change to an LEA's school nursing staff since the previous fiscal three year period from the last application; and

(d) the annual allocation of funds toward[~~s~~] the school nursing program by the Legislature.

(4) An LEA shall provide a dollar for dollar match for an appropriation for school nurses awarded in accordance with this rule.

(5) An LEA shall provide a physician or APRN consultant to provide oversight to the LEA's school nursing program.

(6) An LEA may use matching funds for paid personnel costs of:

(a) a [~~typical~~]school nurse;

[~~(b) a registered professional nurse;~~] or

([~~e~~]b) a licensed medical physician.

(7) An LEA may not use matching funds for:

(a) an LPN;

(b) a special education school nurse;

(c) a pre-school school nurse;

(d) a health aid or clerk;

(e) a certified nurse assistant;

(f) office space; or

(g) medical supplies.

(8) An LEA may not count a school nurse as a full FTE at one school and a partial FTE at another school.

(9) An LEA shall provide documentation to the Superintendent to ensure that an appropriation for school nurses received does not supplant previous school nursing costs, including the LEA's:

(a) funding amounts and sources of funding for school nurses employed in the previous three years;

(b) funding amounts and sources of funding for current school nurses;

(c) current personnel cost information; and

(d) names and license numbers of employed school nurses.

(10) An LEA shall provide names and license numbers of the LEA's school nurses, including new hires, and overseeing consultants to the Superintendent by November 30 annually.

(11)(a) An LEA may provide an in-kind service match to qualify for state funds under this rule.

(b) An in-kind match under Subsection (11)(a) may include:

(i) a collaborative agreement with a local health department supported by an executed memorandum of understanding or contract, which shall include an hourly rate attributable to the services provided;

(ii) volunteer hours by a [~~registered professional~~]school nurse valued at an hourly market rate approved by the Superintendent;

(iii) volunteer hours by a licensed medical physician valued at an hourly market rate approved by the Superintendent;

(iv) funds paid by a local health department toward[~~s~~] school nurse personnel costs; and

(v) funds paid by any other outside source toward[~~s~~] school nurse personnel costs.

(12) The Superintendent shall require an LEA receiving an appropriation for school nurses to:

(a) submit reports to the Superintendent and Utah Department of Health regarding the LEA's school nursing activities; and

(b) participate in standardized data collection as established by the Utah Department of Health, including the annual school health workload census.

(13) An LEA that fails to meet its matching obligations shall reimburse any state funds awarded in accordance with this rule.

(14) Nothing in this rule gives any medical provider authorization to prescribe medications to a student without the written consent of the student's parent or guardian.

KEY: school nurses, awarding, funds
Date of Last Change: [~~June 22, 2020~~]2022
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53F-2-519

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-609**	**Filing ID 54712**

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Rule R277-609 is being amended to make updates to the rule initiated by H.B. 428 passed in the 2022 General Session. The bill requires additional components of a local education agency (LEA) bullying policy to be updated and additional data to be considered.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The amendments specifically add requirements that the LEA's plans and policies surrounding discipline and

bullying include how the LEA will create a discrimination and harassment-free learning environment for students. The changes also require parental outreach be incorporated into the discipline plans and data from the school climate surveys be used to inform updates to the plan during its annual review.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule change simply adds reference to school climates in LEA discipline plans.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. LEAs are already required to have discipline plans. This rule change simply adds reference to school climates and harassment prevention.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change only affects LEAs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule change only impacts LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. There are no added costs. LEAs may need to update existing plans, but the plans are already required.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses.
Sydnee Dickson, Superintendent

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**

Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Section 53E-3-509	Section 53G-8-302
Subsection 53E-3-401(4)	Section 53G-8-202	Section 53G-8-702
Subsection 53E-3-501(1)(b)(v)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/28/2022

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.
R277-609-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(1)(b)(v), which requires the Board to establish rules concerning discipline and control;

(d) Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

(e) Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers;

(f) Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards; and

(g) Section 53G-8-302, which describes the instances when a school employee may use reasonable and necessary physical restraint.

(2)(a) The purpose of this rule is to outline requirements for school discipline plans, restorative practices, and related policies.

(b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

(1) "Discipline" includes:

(a) imposed discipline; and

(b) self-discipline.

(2) "Disruptive student behavior" includes:

(a) the grounds for suspension or expulsion described in Section 53G-8-205; and

(b) the conduct described in Subsection 53G-8-209(2)(b).

(3) "Electronic cigarette product" has the same meaning as that term is defined in Section 76-10-101.

(4)(a) "Emergency safety intervention" or "ESI" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

(b) An "emergency safety intervention" is not for disciplinary purposes.

(5) "Emergency safety intervention committee" or "ESI Committee" means an emergency safety intervention committee described in Section R277-609-7.

(6) "Evidence-based" means the same as defined in Section 53G-8-211.

(7) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

(8) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

(9) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

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

(11) "Physical restraint" has the same meaning as the defined in Section 53G-8-301.

(12) "Plan" means an LEA and school-wide written model for prevention and intervention addressing:

(a) student behavior management;[,]

(b) restorative practices;[,]

(c) harassment and discrimination free learning; and

(d) discipline procedures for students.

(13) "Positive behavior interventions and support" means an implementation framework for maximizing the selection and use of evidence-based prevention practices along a multi-tiered continuum that supports the academic, social, emotional, and behavioral competence of a student.

(14) "Program" means an instructional or behavioral program including:

(a) contracted services offered by private providers under the direct supervision of public school staff;

(b) a program that receives public funding; or

(c) a program for which the Board has regulatory authority.

(15) "Policy" means standards and procedures that include:

(a) [~~the provisions of~~]Section 53G-8-202 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, and cyber-bullying;

(ii) prohibits hazing and bullying;

(iii) requires training regarding:

(A) the prevention of hazing, bullying, cyber-bullying, and discipline among school employees and students; and

(B) the use of restorative practices, positive behavior interventions and supports, and emergency safety interventions;[~~and~~]

(iv) provides for enforcement through employment action or student discipline and;

(v) are informed and updated by data obtained through a school's climate survey as described in Rule R277-623.

(16) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

(17) "Restorative justice program" means the same as that term is defined in Section 53G-8-211.

(18) "Restorative practice" means the building and sustaining of relationships among students, school personnel, families and community members to build and strengthen social connections within communities and hold individuals accountable to restore relationships when harm has occurred.

(19) "School" means any public elementary or secondary school or charter school.

(20) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

(21) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

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

(23) "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

(24) "Student with a qualifying offense" means a qualifying minor who committed an alleged class C misdemeanor, infraction, status offense on school property, or truancy.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, which provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/safehealthyschools/programs/behaviorsupport?mid=5333&tid=2; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, school discipline and restorative practices.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) An LEA shall include as part of the plan, parental outreach and education regarding the plan and how it can provide a discrimination and harassment free environment.

([~~3~~]4) A plan described in Subsection (1) shall include:

(a) the definitions of Section 53G-8-210;

(b) written standards for student behavior expectations, including school and classroom management;

(c) effective instructional practices for teaching student expectations, including:

(i) self-discipline;

(ii) citizenship;

(iii) civic skills; and

(iv) social emotional skills;

(d) systematic methods for reinforcement of expected behaviors;

(e) uniform and equitable methods for correction of student behavior;

(f) consistent processes to collect student discipline data and incident or infraction data, including collection of the number of days of student suspensions and data collected from the school's climate survey as described in Rule R277-623;

(g) uniform and equitable methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(h) an ongoing staff development program related to development of:

(i) student behavior expectations;

(ii) effective instructional practices for teaching and reinforcing behavior expectations;

(iii) effective intervention strategies; and

(iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(i) procedures for ongoing training of appropriate school personnel in:

(i) crisis management;

(ii) emergency safety interventions; and

(iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;

(j) policies and procedures relating to the use and abuse of alcohol, controlled substances, electronic cigarette products, and other harmful trends by students;

(k) policies and procedures for responding to possession or use of electronic cigarette products by a student on school property as required by Subsection 53G-8-203(3);

(k) policies and procedures, consistent with requirements of Rule R277-613, related to:

(i) bullying;

(ii) cyber-bullying;

(iv) hazing; and

(v) retaliation;

(l) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when the physical restraint is allowed as described in Subsection 53G-8-302(2);

(ii) prone, or face-down, physical restraint;

(iii) supine, or face-up, physical restraint;

(iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;

(v) mechanical restraint, except:

(A) protective or stabilizing restraints;

(B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and

(C) any device used by a law enforcement officer in carrying out law enforcement duties;

(vi) chemical restraint, except as:

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and

(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:

(A) school personnel, the family, and the IEP team agree less restrictive means have been attempted;

(B) a FBA has been conducted; and

(C) a positive behavior intervention, based on data analysis has been written into the plan and implemented;

(m) direction for dealing with bullying and disruptive students;

(n) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address student behavior, including students who engage in disruptive student behaviors as described in Section 53G-8-210;

(o) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;

(p) identification of individuals who shall receive notices of disruptive and bullying student behavior;

(q) a requirement to provide for documentation of an alleged class B misdemeanor or a nonperson class A misdemeanor [~~prior to~~]before referral of students with an alleged class B misdemeanor or a nonperson class A misdemeanor to juvenile court;

(r) strategies to provide for necessary adult supervision;

(s) a requirement that policies be clearly written and consistently enforced;

(t) notice to employees that violation of this rule may result in employee discipline or action;

(u) gang prevention and intervention policies in accordance with Subsection 53E-3-509(1);

(v) provisions that account for an individual LEA's or school's unique needs or circumstances, including:

(i) the role of law enforcement;

(ii) emergency medical services;[~~ and~~]

(iii) a provision for publication of notice to parents and school employees of policies by reasonable means; and

(iv) a plan for referral for a student with a qualifying office to alternative school-related interventions, including:

(A) a mobile crisis outreach team, as defined in Section 80-1-102;

(B) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section 80-5-102;

(C) a youth court; or

(w) a comparable restorative justice program.

(4) A plan described in Subsection (1) may include:

(a) [~~the provisions of~~]Subsection 53E-3-509(2); and

(b) a plan for training administrators and school resource officers in accordance with Section 53G-8-702.

R277-609-5. Physical Restraint and Seclusionary Time Out.

(1) When used consistently with an LEA plan under Subsection R277-609-4(1):

(a) a physical restraint must be immediately terminated when:

(i) a student is no longer an immediate danger to self or others; or

(ii) a student is in severe distress; and

(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.

(2) If a public education employee physically restrains a student, the school or the public education employee shall provide notice as soon as reasonably possible and before the student leaves the school as described in Section R277-609-10 to the student's parent.

(3) A public education employee may not use physical restraint on a student for more than the shortest of the following before stopping, releasing, and reassessing the intervention used:

(a) the amount of time described in the LEA's emergency intervention training program;

(b) 30 minutes; or

(c) when law enforcement arrives.

(4) A public education employee may not use physical restraint as a means of discipline or punishment.

(5) If a public education employee uses seclusionary time out, the public education employee shall:

(a) use the minimum time necessary to ensure safety;

(b) use release criteria as outlined in LEA policies;

(c) ensure that any door remains unlocked consistent with the fire and public safety requirements described in Rules R392-200 and R710-4;

(d) maintain the student within line of sight of the public education employee;

(e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and

(f) ensure that the enclosed area meets the fire and public safety requirements described in Rules R392-200 and R710-4.

(6) If a student is placed in seclusionary time out, the school or the public education employee shall provide notice as soon as reasonably possible and before the student leaves the school to:

(a) the student's parent; and

(b) school administration.

(7) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.

(8) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than [~~fifteen~~]15 minutes, the school or the public education employee shall immediately provide notice to:

(a) the student's parent or guardian; and

(b) school administration.

(9) Seclusionary time out may only be used for maintaining safety.

(10) A public education employee may not use seclusionary time out as a means of discipline or punishment.

R277-609-6. Implementation.

(1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.

(2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs [~~prior to~~]before suspension or court referral.

(3) An LEA shall implement positive behavior interventions, supports, and restorative practices as part of the LEA's continuum of behavior interventions strategies.

R277-609-7. LEA [~~Emergency Safety Intervention (~~]ESI[~~)~~] Committees.

(1) An LEA shall establish an [~~Emergency Safety Intervention (~~]ESI[~~)~~] Committee.

(2) An LEA's ESI Committee:

(a) shall include:

(i) at least two administrators;

(ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and

(iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

(b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;

(c) shall determine and recommend professional development needs; and

(d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions; and

(e) shall ensure that each emergency incident where a school employee uses an emergency safety intervention is documented in the LEA's student information system and reported to the Superintendent through the Board's UTREx system.

R277-609-8. LEA Reporting.

(1) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

(2) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (1).

(3) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

(4)(a) An LEA shall submit all required UTREx discipline data and incident or infraction data elements, and suspensions to the Superintendent no later than June 30 of each year.

(b) Beginning in the 2018-19 school year, an LEA shall submit all required UTREx discipline data and incident or infraction data elements as part of the LEA's daily UTREx submission.

R277-609-9. Special Education Exception[~~(~~]s[~~)~~] to this Rule.

(1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

(2) The Superintendent shall periodically review:

(a) all LEA special education behavior intervention, procedures, and manuals; and

(b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-10. Parent Notification and Court Referral.

(1) LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

(2) An LEA shall establish policies that:

(a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;

(b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:

(i) numbers of disruptions, suspensions, and timelines in accordance with Section 53G-8-210;

(ii) school resources available;

(iii) cooperation from the appropriate juvenile court in accessing student school records, including:

(A) attendance;

(B) grades;

(C) behavioral reports; and

(D) other available student school data; and

(iv) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

(3)(a) When an emergency safety intervention is used to protect a student or others from harm, a school shall:

(i) provide notice to the student's parent as soon as reasonably possibly and before the student leaves the school;

(ii) provide notice to school administration; and

(iii) provide documentation of the emergency safety intervention to the LEA's ESI Committee described in Section R277-609-7.

(b) In addition to the notice described in Subsection (3)(a), if the use of an emergency safety intervention occurs for more than [~~fifteen~~]15 minutes, the school shall immediately provide a second notification to:

(i) the student's parent or guardian; and

(ii) school administration.

(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.

(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during the use of the emergency safety intervention upon request of the parent or guardian.

(b) Within 24 hours of the school using an emergency safety intervention with a student, a school shall provide notice to a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during the use of the emergency safety intervention.

(c) A parent or guardian may request a time to meet with school staff and administration to discuss the use of an emergency safety intervention.

R277-609-11. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-12. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions
Date of Last Change: 2022[~~August 25, 2021~~]
Notice of Continuation: November 14, 2019
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(b)(v); 53E-3-509; 53G-8-202; 53G-8-702[~~,~~]; 53G-8-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-726**	**Filing ID 54722**

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R277-726. Statewide Online Education Program

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The amendment updates qualifications and application procedures for the Statewide Online Education Program (SOEP) participation and governing the program statewide. The amendment also further updates procedures for distributing funds allocated for the SOEP program.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The amendment updates the definition of "Eligible Student" and removes Section R277-726-3, Incorporation of Provider Applications by Reference, and adds new requirements for SOEP Providers. The amendment also removes the requirement for a student's schedule to demonstrate progress toward early graduation in order for the student to exceed a full course load during a regular school year. The amendment adds new requirements for the Superintendent to prepare and make available both applications and program agreements, and also specifies qualification procedures for special populations to receive limited appropriations.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule simply makes technical changes, adds language allowing the Utah State Board of Education (USBE) to restrict participation for low performing providers, and adds language regarding concurrent enrollment.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule

simply makes technical changes, adds language allowing USBE to restrict participation for low performing providers, and adds language regarding concurrent enrollment. Restricted provider participation only affects SOEP providers and not Local Education Agencies (LEAs).

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule affects USBE and LEAs but does not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule change only affects USBE and LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. USBE does not estimate any added compliance costs for LEAs or others.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, Superintendent.

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Article X, Section 3	Section 53E-3-401	Section 53F-4-514
Section 53F-4-510		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also

request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	07/01/2022

R277. Education, Administration.
R277-726. Statewide Online Education Program.
R277-726-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53F-4-514, which requires the Board to make rules:

(i) providing for the administration of the applicable statewide assessments to students enrolled in online courses;

(ii) that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(iii) that establish protocols for an online course provider to obtain approval to become a certified online course provider; and

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

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Applicable statewide assessments" means:

(a) the high school assessment described in Section 53E-4-304 and Subsection R277-404-2(6);

(b) a standards assessment as defined in Section 53E-4-303; and

(c) a Utah alternative assessment as defined in Subsection R277-404-2(13).

(3) "Certified online course provider" means the same as the term is defined in Subsection 53F-4-501(1).

(4) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(5)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Statewide Online Education Program application provided by the Superintendent.

(b) Except as provided in Subsection 53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(6)(a) "Eligible student" means a student enrolled in grades [~~6~~]7-12 in a secondary environment in a course that:

(i) is offered by a public school; and

(ii) provides the student the opportunity to complete middle school requirements or earn high school graduation credit.

(b) "Eligible student" does not include a student enrolled in an adult education program.

(7) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(8)(a) "Executed CCA" means a CCA that has been executed pursuant to Subsection 53F-4-508(3) and received by the Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.

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

(10) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(11) "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2).

(12) "Online course provider" or "provider" means:

(a) a school district school with an approved application described in Subsection R277-726-3(1)(a);

(b) a charter school with an approved application described in Subsection R277-726-3(1)(a);

(c) an LEA program created to serve Utah students in grades 7-12 online with an approved application described in Subsection R277-726-3(1)(a); or

(d) a program of an institution of higher education described in Subsection 53F-4-504(3) with an approved application described in Subsection R277-726-3(1)(b).

(13) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.

(14) "Primary school of enrollment" means:

(a) a student's school of record within a primary LEA of enrollment; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(15) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(16) "Section 504" means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(17) "Standard of active participation" means the measure of student engagement that is used by the certified online course provider to count a student as in attendance for a course.

(18) "Statewide Online Education Program" or "program" means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.

(19) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

(20) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

(21) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(22) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date;

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

[~~**R277-726-3. Incorporation of Provider Applications by Reference.**~~

~~(1) This rule incorporates by reference the June 2021 edition of:~~

~~(a) the LEA SOEP Provider Application and Statewide Services Agreement;~~

~~(b) the Higher Education SOEP Provider Application and Statewide Services Agreement, Utah Public Institutions of Higher Education;~~

~~(c) the Certified Online Provider SOEP Provider Application and Statewide Services Agreement; and~~

~~(d) the Certified Online Provider SOEP Provider Application and Statewide Services Agreement for Program Re-Admission.~~

~~(2) A copy of each provider application is located at:~~

~~(a) https://schools.utah.gov/edonline/prospectiveproviders; and~~

~~(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.~~]

R277-726-[~~4~~]3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's plan for college and career readiness;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP, Section 504 plan, or qualifies for multilingual supports, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations and other relevant supports to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs the appropriate parties.

R277-726-[~~5~~]4. Eligible Student and Parent Rights and Responsibilities.

(1) An eligible student may register for program credits consistent with Section 53F-4-503.

(2) An eligible student may exceed a full course load during a regular school year if[~~:~~

~~(a)~~] the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort[~~; and~~

~~(b) the student's schedule demonstrates progress toward early graduation~~].

(3) In accordance with Subsection 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-8 and Rule R277-484 to account for credits in excess of full-time enrollment in a local [~~S~~]student [~~I~~]information [~~S~~]system.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-[~~(8)~~]7(15) and Subsection R277-726-2(17).

(b) If a student changes the student's enrollment in the student's primary LEA or withdraws from an online course for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student [~~should~~]shall enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment by entering the course into the primary LEA's student information system and increasing membership, if necessary.

R277-726-[~~6~~]5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.

(5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts, including appropriate student coursework completed before grade 9.

(6) A primary school of enrollment shall recognize credit earned toward high school graduation by a participating secondary student through courses completed before grade 9 for purposes of high school graduation provided that:

(a) the student has in the student's records documentation of the student's intention to graduate early; and

(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.

(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students pursuant to Rule R277-407.

(8)(a) If a participating student qualifies for a fee waiver, the student's primary LEA or school of enrollment shall provide the participating student access to an online course by:

(i) allowing a student access to necessary technology in a computer lab or other space within the school building during a school period or during the regular school day for the student to participate in an online course; or

(ii) providing a participating student technology and wi-fi needed for the student to participate outside of the school building.

(b) If a participating student who qualifies for a fee waiver is a home or private school student, the online course provider shall provide the participating home or private school student access to the online course.

(9) A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day, sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

(10)(a) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.

(b) A primary LEA of enrollment accepting credit toward high school requirements is not required to independently verify:

(i) early graduation status; or

(ii) the non-supplanting nature of SOEP courses.

(11) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and high school graduation credit for students participating before grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection (10) once a student completes grade 8.

R277-726-[~~7~~]6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer the Utah standards and high school assessments, as applicable, consistent with Section 53F-4-514 and Rule R277-404.

(3) The Superintendent shall prepare and make available applications and program agreements for:

(a) LEA providers;

(b) higher education providers; and

(c) certified online providers.

([~~3~~]4)(a) The Superintendent may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter.

(5)(a) Before approving a provider, the Superintendent shall review Annual Financial Reports and state-administered test data to establish capacity of a program to serve an increased range of students while still meeting program requirements.

(b) The Superintendent may restrict a provider from offering coursework if the Superintendent determines that the provider demonstrates repeated low performance on statewide assessments in English Language Arts, math, or science.

([~~4~~]6) The Superintendent shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53F-4-505 through 53F-4-507.

([~~5~~]7) The Superintendent may refuse to provide funds under a CCA if the Superintendent finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

([~~6~~]8) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

([~~7~~]9) If a Superintendent or federal entity's investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for costs related to compliance.

([~~8~~]10) The Superintendent may monitor an LEA's or program provider's compliance with any requirement of state or federal law or Board rule under the program.

([~~9~~]11) The Superintendent may withhold funds from a program provider for the participant's failure to comply with a reasonable request for records or information.

([~~10~~]12) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

([~~11~~]13) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and when a provider qualifies to receive payment, under Subsection 53F-4-505(4).

([~~12~~]14) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

([~~13~~]15)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection ([~~13~~]15)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-[~~8~~]7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer the applicable statewide assessments to a participating private or home school student as directed by the Superintendent, including proctoring the applicable statewide assessments, consistent with Section 53F-4-510 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for the applicable statewide assessments described in Subsection (1)(a).

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy Board requirements for:

(a) consistency with course standards;

(b) criminal background checks for provider employees;

(c) documentation of student enrollment and participation; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for multilingual students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy the requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, [~~Utah Family Educational Rights and Privacy Act~~]Student Data Protection, and Rule R277-487, including:

(a) protecting the confidentiality of a student's records and providing a parent and an eligible student access to records; and

(b) providing a parent or student documentation of educational performance, including:

(i) test scores;

(ii) grades;

(iii) progress and performance measures; and

(iv) completion of credit.

(7) Except as otherwise provided in this Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment by placing the student on disciplinary withdrawal.

(b) A provider is responsible for due process procedures for student disciplinary actions in the provider's online program.

(c)(i) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is inactive in a course for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(ii) If a student, parent, or counselor fails to request reinstatement following notification under Subsection (c)(i), the provider shall formally withdraw the student within 72 hours and notify the student, parent, and primary LEA of the action.

(10) If a student entitled to services under the IDEA is removed from an online program, the primary LEA shall work with the student and the student's parents to identify alternatives to provide a free and appropriate public education.

(11)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) A provider shall[~~Program~~] code program courses [~~shall be coded~~]as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(12) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(13) A provider shall maintain and provide records and systems as part of a public online school or program, including:

(a) financial and enrollment records;

(b) information for accountability, program monitoring, and audit purposes; and

(c) providing timely documentation of student participation, enrollment, educator credentials, and other additional data for purposes including giving a student's primary school of enrollment access to the student's records to appropriately support the student.

(14) A provider shall maintain the following for at least five calendar years after the student graduates:

(a) test scores;

(b) student grades;

(c) completion of credit; and

(d) other progress and performance measures.

(15)(a) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(b) A provider shall update CCAs to the nearest credit value earned by June 30 annually.

(c) A provider may only maintain an CCA open after June 30 if a student remains actively engaged in coursework, meeting the provider's standard of active participation.

(16) A provider shall inform a student and the student's parent of expectations for active participation before the inception of course work, including informing the student and the student's parent of travel expectations to fulfill course requirements.

(17)(a) An LEA may participate in the program as a provider by offering a school or program consistent with Rule R277-115 to a Utah secondary student in grades [~~6~~]7-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(b) An LEA program created in accordance with Subsection (18)(a) for serving students in grades 9-12 online must partner with an accredited school and shall:

(i) report grades and credit earned by a student to the Superintendent; and

(ii) record educator assignments consistent with Rule R277-484.

(18) A program school or program shall:

(a) be accredited [~~by the accrediting entity adopted by the Board~~]consistent with Rule [~~R277-305~~]R277-410;

(b) have a designated administrator who meets the requirements of Rule [~~R277-520~~]R277-309;

(c) ensure that a student who qualifies for a fee waiver receives services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. [~~Sec~~]1232g and 34 CFR Part 99;

(ii) Rule R277-487;

(iii) this Rule R277-726; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with Rules R277-700 and R277-404;

(f) shall not issue transcripts under the name of a third party provider; and

(g) shall record teaching assignments by November 15 annually consistent with Rule R277-484 and Section [~~R277-512-7~~]R277-312-3, either directly or through a partner school in accordance with Subsection (18)(b).

(19) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, before the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-301, Educator Licensing - Highly Qualified Assignment;

(e) for a provider that provides an online course to a private or home school student, shall agree to administer and have the capacity to proctor and carry out the applicable statewide assessments, consistent with Sections 53E-4-302, 53F-2-103, and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for multilingual students;

(g) shall submit CCAs to the Superintendent before the provider initiating instruction of a student;

(h) may not begin offering instruction to a student until the Superintendent issues a notice of enrollment for the student for each course the student participates in; and

(i) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, and 53F-4-508.

(21) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(22)(a) A provider contracting with a third party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third party provider to ensure:

(i) a third party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third party provider is aligned with the Board's core standards and rules;

(iii) a third party provider has access to curriculum for alignment and adjustment to ensure the curriculum is consistent with the Utah core standards in Rule R277-700 and a Board approved core code;

(iv) supervision of third party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

(23) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

(24) A provider shall maintain a course completion rate of at least 80% annually to remain in good standing with the program.

(25) A provider is subject to the same approval and annual performance review as described for a certified online course provider in Subsections R277-726-12(1) through (10) while utilizing the applicable applications for a provider described in Subsections R277-726-3(1)(a) and (b).

(26) A provider utilizing a third party shall establish contractual and procedural safeguards:

(a) retaining legal and procedural authority to open coursework to a participating student only upon issuance of a notice of enrollment regarding a particular course and credit;

(b) signifying the provider's authority to interact instructionally with a student not regularly-enrolled in an LEA, but participating in SOEP courses with approval of the student's primary LEA of enrollment; and

(c) including acceptance of financial responsibility by a primary LEA of enrollment.

(27) A provider is not required to independently verify:
(a) early graduation status; or
(b) the non-supplanting nature of SOEP courses.

R277-726-[~~9~~]8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.

(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.

(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).

(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:

(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(3) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection (3)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (3)(a)(i).

(4) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, the student may enroll in the LEA that will prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i) including in cases where the provider utilizes a third party provider for delivery of educational or other services.

R277-726-[~~10~~]9. [~~Home and Private School Appropriation~~] Limited Appropriations for Special Populations.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) Before December 1 annually, the Superintendent shall accommodate home school students with at least 50% of the total appropriation for home and private school students, unless the home school demand is less.

(b) After December 1 annually, until available funds are obligated, the Superintendent shall:

(i) receive and accept enrollment requests on a first come, first served basis; and

(ii) offer preference to home school students in the event demand exceeds available funding.

(3) If home school or private school student funds remain by December 1, the Superintendent may release the funds for any pending enrollment requests.

(4)(a) For each school with a student population of less than 1,000 students, the Superintendent shall prioritize available funds to cover one course per student at the highest course rate.

(b) After disbursing funds in accordance with Subsection (4)(a), if funds remain, the Superintendent shall distribute the remaining funds based on population with 70% to qualifying district schools and 30% to charter schools.

(c) If unused funds remain after March 1 annually, the Superintendent may redistribute available funds to qualifying LEAs whose needs exceeded their initial allocation.

(d) The Superintendent shall calculate allocations using prior-year UTREx end of year extracts.

R277-726-[~~11~~]10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

R277-726-[~~12~~]11. Certified Online Course Provider Application Approval, Program Requirements, and Fees.

(1) An entity other than an online course provider may become a certified online course provider if the entity submits an application [~~described in Subsection R277-726-3(1)(c)~~]on a form provided by the Superintendent.

(2) An entity other than an online course provider shall submit [~~the~~]an application [~~described in Subsection R277-726-3(1)(c)~~]on or before the annual deadline established by the Superintendent.

(3) The Superintendent shall review each application within a reasonable amount of time.

(4) If the Superintendent finds the application submitted is satisfactory, including a demonstration of the entity's ability to adhere to requirements within the application, this Rule R277-726, and state law, the Superintendent shall forward the application to the Board for final approval.

(5) Once approved by the Board, an entity shall become a certified online course provider.

(6) A certified online course provider shall adhere to requirements to remain certified and in good standing within the program including:

(a) requirements applicable to an online course provider described in this Rule R277-726, including the requirement to maintain a course completion rate of at least 80%;

(b) additional requirements prescribed in the application[~~described in Subsection R277-726-3(1)(c)~~]; and

(c) state laws applicable to an online course provider, including Sections 53F-4-501 et. seq.

(7) A certified online course provider shall be subject to an annual performance review by the Superintendent.

(8) If the Superintendent finds the certified online course provider is not in compliance with any requirement as outlined in Subsection (6) of this part, the Superintendent shall provide the certified online course provider with a list of non-compliance issues and a reasonable timeline for the certified online course provider to cure the instances of non-compliance.

(9) If the certified online course provider fails to correct instances of non-compliance within the allotted timeline, the certified online course provider shall be removed from the program.

(10) A certified online course provider that has been removed from the program may apply in the application round following removal from the program for re-admission to the program using [~~the application described in Subsection R277-726-3(1)(d)~~]an application provided by the Superintendent.

(11) A certified online course provider shall remit fees to the Superintendent for participation in the program as follows:

(a) 5% of revenue collected for the first $200,000 received pursuant to Section 53F-4-505; and

(b) 1% of revenue collected after the first $200,000 received pursuant to Section 53F-4-505.

R277-726-12. Online Concurrent Enrollment.

For a student enrolled in a concurrent enrollment course through an SOEP provider, to the extent there is a conflict between this rule and Title 53F, Chapter 4, Part 5, Statewide Online Education Program, and Title 53E, Chapter 10, Part 3, Concurrent Enrollment, the concurrent enrollment code provisions shall govern.

KEY: statewide online education program
Date of Last Change: [~~May 11,~~] 2022
Notice of Continuation: January 13, 2022
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-4-510; 53F-4-514; 53E-3-401

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R277-918**	**Filing ID 54713**

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200

Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R277-918. Education Innovation Program

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Rule R277-918 is being created in relation to a new program created by H.B. 386 passed in the 2022 General Session.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The newly created rule establishes the requirement that a local education agency (LEA) and teacher applicant for an innovation program establish an agreement regarding data and metrics for measuring student performance and outcomes. This proposed rule also requires this agreement be shared with the director of Utah Leading through Effective, Actionable, and Dynamic (ULEAD) Education and that the director of ULEAD may serve as a consultant on best practices for performance metrics.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This proposed rule is not expected to have fiscal impact on state government revenues or expenditures. This proposed rule does not have any budget impact on the Utah State Board of Education (USBE) or other state governments.

B) Local governments:

This proposed rule is not expected to have fiscal impact on local governments' revenues or expenditures. This proposed rule outlines procedures for LEAs participating in the education innovation program but does not contain any fiscal impact outside of LEA choices regarding innovation programs.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed rule is not expected to have fiscal impact on small businesses' revenues or expenditures. This proposed rule only affects USBE and LEAs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only affects USBE and LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. This proposed rule only applies to LEAs choosing to participate in the program and does not add any compliance costs.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this proposed rule is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Article X, Section 3	Section 53G-10-601	Subsection 53E-3-501(1)(c)(v)
Subsection 53E-3-401(4)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	07/01/2022

R277. Education, Administration.
R277-918. Education Innovation Program.
R277-918-1. Authority and Purpose.
(1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
(2) The purpose of this rule is to provide the minimum reporting and data requirements for an LEA that has approved an innovation classroom.

R277-918-2. Definitions.
(1) "Director" means the ULEAD director as defined in Section 53E-10-701.
(2) "Innovation program" means the same as the term is defined in Section 53G-10-601.
(3) "Opportunity classroom" means the same as the term is defined in Section 53G-10-601.

R277-918-3. Learning and Performance Monitoring Agreement.
(1) An LEA that has an approved innovation program shall establish an agreement with the teacher regarding measurement of student learning and performance outcomes for the approved innovation program.
(2) The agreement described in Subsection (1) shall include:
(a) the required steps and processes expected for performance measurement including:
(i) the type of data to be collected;
(ii) the frequency of the data collection;
(iii) the methodology of performance measurements;
(iv) how the data will be shared; and
(v) relevant data protection procedures consistent with state and federal law;
(b) relevant timeframes and deadlines;
(c) an establishment of relevant baseline data;
(d) general data collection responsibilities of all parties; and
(e) any other relevant evidence needed to effectively measure student learning and performance outcome because of the innovation program.
(3) An LEA shall provide the agreement described in Subsection (1) to the director upon approval.
(4) A teacher or LEA may consult with the director before applying or application approval regarding best practices for measuring student learning and performance outcomes.

KEY: innovation; opportunity classroom; ULEAD; data collection
Date of Last Change: 2022
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-501(1)(c)(v); 53E-3-401(4); 53G-10-601 et. seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-922**	**Filing ID 54714**

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-922. Digital Teaching and Learning Grant Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
Rule R277-922 is being amended to update this rule due to changes in reporting requirements for the program made by H.B. 481 passed in the 2022 General Session.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This rule is being amended to remove additional reporting requirements that were shifted to the independent evaluator by H.B. 481 (2022).

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule change makes technical changes and incorporates an updated hyperlink. It does not impact the Utah State Board of Education (USBE) or other state agency budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule change makes technical changes. It does not impact local education agency (LEA) budgets or other local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change is related to the digital teaching and learning program and only affects USBE and LEAs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only impacts USBE and LEAs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for affected persons. This rule change makes technical changes that do not impact compliance costs for USBE or LEAs.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses.
Sydnee Dickson, Superintendent

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-510

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/28/2022

R277. Education, Administration.
R277-922. Digital Teaching and Learning Grant Program.
R277-922-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-2-510, Digital Teaching and Learning Grant Program, which requires the Board to:

(i) establish a qualifying grant program; and

(ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.

(2) The purpose of this rule is to:

(a) establish an application and grant review committee and process;

(b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

(1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:

(a) established by the Board as required in Section 53F-2-510; and

(b) required to perform the duties described in Section R277-922-5.

(2) "LEA plan" has the same meaning as that term is defined in Section 53F-2-510.

(3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in Section R277-922-3.

(4) "Program" has the same meaning as that term is defined in Section 53F-2-510.

(5) "Participating LEA" means an LEA that:

(a) has an LEA plan approved by the Board; and

(b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

(1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:

(a) the application process for an LEA to receive a grant under the program; and

(b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) https://www.schools.utah.gov/curr/digital?mid=4332&tid=4; and

(b) the Utah State Board of Education, 250 East 500 South, Salt Lake City, Utah 84111.

R277-922-4. LEA Planning Grants.

(1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount of $5,000.

(3) To qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete the readiness assessment required in Section 53F-2-510.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

R277-922-5. Digital Teaching and Learning Advisory Committee Duties.

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint six members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning;

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN); and

(e) one member who represents the Utah School Superintendents Association.

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-6. Board Approval or Denial of LEA Plans.

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-7. Pre-LEA Plan Submission Requirements.

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

(a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;

(b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

(i) a representative group of school leadership from schools participating in the program;

(ii)(A) the school district superintendent;

(B) charter school executive director; or

(C) the school district superintendent's or charter school executive director's designee;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53F-2-510.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsection (1)(b).

R277-922-8. LEA Plan Requirements.

(1) An LEA shall develop a five year LEA plan in cooperation with educators, paraeducators, and parents,

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53F-2-510;

(b) a statement of purpose that describes the outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase in an LEA's growth or proficiency on the statewide accountability metrics by the end of the fifth year of the LEA's implementation of the program; or

(ii) a learning outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified in an LEA's five year plan;

(d) an implementation process structured to yield an LEA's learning outcomes;

(e) a plan for infrastructure needs and refreshment cycle;

(f) a description of necessary high quality digital primary instructional materials, as defined in Section R277-469-2, in relation to the outcomes provided for in Subsection R277-922-8(b)(i) including:

(i) providing special education students with appropriate software;

(ii) the recommended usage requirements of the software provider; and

(iii) the best practices recommended by the software or hardware provider;

(g) a detailed plan for student engagement in personalized learning;

(h) technical support standards for implementation and maintenance of the program that removes technical support burdens from the classroom teacher;

(i) proposed security policies, including security audits, student data privacy as referenced in Rule R277-487, and remediation of identified lapses;

(j) a disclosure by an LEA of the LEA's current technology expenditures;

(k) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

(l) a description of how an LEA will provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching;

(m) a plan for digital citizenship curricula and implementation; and

(n) a plan for how an LEA will monitor student and teacher usage of the program technology.

(2) An LEA's approved LEA plan is valid for five years, and may be required to be reapproved by the advisory committee and the Board after five years of implementation.

(3) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-9. Distribution of Grant Money to Participating LEAs.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10% of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-10. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

(1) to fund nontechnology programs;

(2) to purchase mobile telephones;

(3) to fund voice or data plans for mobile telephones; or

(4) to pay indirect costs charged by the LEA.

R277-922-11. Participating LEA Reporting Requirements.

[~~Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a~~]A participating LEA shall annually review [~~and report~~]how the participating LEA made progress toward implementation.

R277-922-12. Evaluation of LEA Program Implementation.

(1) An evaluation shall be conducted by [~~the~~]an independent evaluator described in Section 53F-2-510[~~ shall include a review of:~~

~~(a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;~~

~~(b) a participating LEA's progress toward meeting the learning outcomes in the participating LEA's LEA plan~~].

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

(a) shall:

(i) provide assistance to the participating LEA; and

(ii) recommend changes to the LEA's LEA plan; or

(b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs
Date of Last Change: 2022[~~December 9, 2021~~]
Notice of Continuation: October 7, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-510

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	**R392-200**	**Filing ID: 54718**

Agency Information

1. Department:	Health and Human Services
Agency:	Disease Control and Prevention, Environmental Services
Room no.:	Second Floor
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 142102
City, state and zip:	Salt Lake City, UT 84114-2102
Contact person(s):	

Name:	**Phone:**	**Email:**
Karl Hartman	801-538-6191	khartman@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the Utah Rulewriting Manual. As required, the amendments to Rule R392-200 provide technical and conforming changes in accordance with the Utah Rulewriting Manual.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The amendments to Rule R392-200 provide technical and conforming changes throughout this rule and remove superfluous and repetitive language. Other sections have been amended to improve clarity and ease of use, and to reflect current school sanitation and safety practices.

Section R392-200-1 is expanded to explain the purpose of the rule.

In Section R392-200-2, adds definitions for ADA, Building Code, Career and Technical Education (CTE), Child care center, Construction change, Dwelling, Fire Code, Food establishment, High-risk injury area, Home school, IPM, Local health department, Mechanical Code, Pest, Place of higher education, Plumbing Code, Private school, Risk, Service Animal, and Vector. Amended definition for Local health officer. Also, removes definitions for Department, and Director. The Department of Health and Human Services (Department) makes numerous nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Utah Rulewriting Manual. The Department created new sections and moved existing provisions from other sections in this rule to improve readability and flow. The Department made substantive amendments are described below within each section description.

Section R392-200-3 is modified to remove cumbersome, superfluous language and to clearly designate places of education that are specifically exempted from the requirements of this rule.

In Section R392-200-4, the "grandfather clause" previously included in Section R392-200-2 is moved to this section. A plan submission requirement was added for schools that are substantially altered, modified, or renovated.

In Section R392-200-5, a plan submission requirement is added for schools that are newly built.

Section R392-200-6 is a new section. Some requirements were moved from previous Subsection R392-200-9(1), but they are significantly modified. Specific required first aid supplies are listed rather than a general requirement for "supplies." Now this rule requires that they are readily accessible, not expired, and restocked as needed. Written record keeping requirements was added. Instructor/staff training requirements are also added.

Section R392-200-7 is a new section. Some requirements were moved from previous Subsection R392-200-9(2), but they are significantly modified. Specific playground installations and maintenance requirements are added rather than a general reference to the Handbook for Playground Safety. Some fire prevention requirements are removed because they were not consistent with Fire Code. Overly cumbersome plant and animal handling requirements are removed. Hazardous chemical storage requirements are added. Electrical safety requirements are also added.

Sections R392-200-8 through R392-200-10 are broken up into three sections (General; Custodial; and Heating, Ventilation, and Air Conditioning). Lighting requirements are amended to be consistent with current lighting technology and energy conservation standards. Adds cleaning requirements for certain carpets and furniture, and removes cumbersome school temperature requirements.

In Sections R392-200-11 and R392-200-12, adds water supply and wastewater requirements consistent with other rules managed under Title R392.

Section R392-200-13 is modified to require a solid partition installed to provide privacy between a urinal and any adjacent handwashing area.

Section R392-200-14 is a new section that expands upon and clarifies requirements previously included in Subsection R392-200-7(6).

Section R392-200-15 is a new section that expands upon and clarifies requirements previously included in Subsection R392-200-7(7).

Section R392-200-16 is a new section that expands upon and clarifies requirements previously included in Subsection R392-200-7(8).

Section R392-200-17 is a new section previously located in Section R392-200-5. Provisions pertaining to "stray animals" are simplified and clarified.

Section R392-200-18 is a new section that expands upon and clarifies requirements previously included in Subsection R392-200-7(12).

Section R392-200-19 is a new section that simplifies and clarifies requirements previously included in Section R392-200-6.

Section R392-200-20 is a new section that simplifies and clarifies requirements previously included in Subsection R392-200-7(9).

Section R392-200-21 is a new section that directs the operator to Rule R392-502 for requirements related to student boarding.

Section R392-200-22 is a new section that simplifies and clarifies requirements previously included in Subsection R392-200-7(10).

Section R392-200-23 is a new section that simplifies and clarifies requirements previously included in Subsection R392-200-7(5).

Sections R392-200-24 and R392-200-25 add facility inspection and closure requirements consistent with other rules managed under Title R392.

Section R392-200-26 adds a severability clause consistent with other rules managed under Title R392.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the Department.

B) Local government:

No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the local health departments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

No anticipated cost or savings because the substantive changes reflect current industry practice. In addition, Section R392-200-4 contains a grandfather clause which states that, except in the case of an imminent health hazard, this rule does not require a construction change in any portion of a school if the facility was constructed in compliance with law in effect when the facility was constructed.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

No anticipated cost or savings because the substantive changes reflect current industry practice. In addition, Section R392-200-4 contains a grandfather clause which states that, except in the case of an imminent health hazard, this rule does not require a construction change in any portion of a school if the facility was constructed in compliance with law in effect when the facility was constructed.

E) Persons other than small businesses, non-small businesses, or state or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

No anticipated cost or savings because the substantive changes reflect current industry practice.

F) Compliance costs for affected persons:

No anticipated cost or savings because the substantive changes reflect current industry practice.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There is no fiscal impact on businesses because the changes reflect existing industry standards. Tracy Gruber, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 26-15-2	Section 26-1-5	Section 26-7-1

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	**Date:**	06/29/2002

R392. Health, Disease Control and Prevention, Environmental Services.

[~~**R392-200. Design, Construction, Operation, Sanitation, and Safety of Schools.**~~

~~**R392-200-1. Authority and Purpose of Rule.**~~

~~This rule is authorized under Sections 26-15-2, 26-1-30(9), 26-1-30(23), 26-1-5, and 26-7-1. It establishes minimum standards for the design, construction, operation, sanitation, and safety of schools.~~

~~**R392-200-2. Applicability, Responsibility for Compliance.**~~

~~(1) The provisions of this rule are applicable to the design, construction, operation, maintenance, safety, health, and sanitation of schools, their grounds, and accessory structures.~~

~~(2) The governing body of the school, shall ensure that the school building and grounds are constructed, operated, and maintained in accordance with this rule.~~

~~(3) This rule does not require a construction change in any portion of a school if it was constructed and in compliance with law in effect at the time the school was built except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that conditions in any school are a threat to the health of persons using the school, the Executive Director or the Local Health Officer may order correction of any condition that impairs or endangers the health or life of those attending schools. The Executive Director or Local Health Officer may allow temporary measures to ameliorate the problem for up to a year until the governing body can make a permanent correction.~~

~~**R392-200-3. Definitions.**~~

~~The following definitions apply to this rule:~~

~~(1) "Department" means the Utah Department of Health.~~

~~(2) "Director" means the Executive Director of the Utah Department of Health, or designated representative.~~

~~(3) "Governing Body" means the board of education, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the school.~~

~~(4) "Instructor" means any volunteer or employee educator, licensed or not licensed, responsible for student education at a private or public school.~~

~~(5) "Local Health Officer" means the health officer of any county or district health department, or designated representative.~~

~~(6) "School" means any public or private educational institution including charter schools, elementary schools, middle schools, and secondary schools established to provide education for grades kindergarten through 12 regardless of student's age, including attached pre-schools, but excluding home schools.~~

~~(7) "Toxic" means any chemical or biological agent the exposure to which may cause an acute or chronic health hazard.~~

~~**R392-200-4. Site Standards.**~~

~~(1) Prior to developing plans and specifications for a new school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments regarding environmental health and safety issues to avoid unreasonable risks to the health and safety of students, school staff, and faculty.~~

~~(2) The school site shall be located to minimize the negative influence of railroads, freeways, highways, heavy traffic roads, industrial areas, airports and aircraft flight patterns, fugitive dust, odors, or other areas where auditory problems, malodorous conditions, or safety and health hazards exist.~~

~~**R392-200-5. School Grounds.**~~

~~(1) School ground fencing shall be constructed of smooth materials with no barbs or projections and shall be maintained in good repair.~~

~~(2) Mechanical equipment, electrical transmission lines, poles, transformer boxes, and other electrical equipment shall be located or protected with a barrier to prevent an electrical or other safety hazard.~~

~~(3) Walkways shall be provided between the school building and other buildings on the school grounds. Walkways shall be graded to allow proper drainage, and allow for safe passage. Walkways and parking areas shall be maintained in good repair and free of a buildup of snow and ice.~~

~~(4) Illuminance at a minimum of 1 foot candle shall be provided for walkways, building entrances, parking areas, roads, and similar areas, during hours of use.~~

~~(5) With the exception of "pop-up heads", elevated lawn sprinkler heads shall not be permanently installed and shall not be left in place on playgrounds or other recreational areas.~~

~~(6) Service roads, parking areas, and walkways on school property shall be constructed and located to facilitate the safe movement of vehicular and pedestrian traffic. Student drop-off and pick-up zones must maximize safety.~~

~~(7) The governing body shall control health and safety risks on school property by removing items that are likely to be a source of~~

~~risk such as weeds, holes, broken glass, or broken or cut tree limbs and by filling or covering excavations or ditches.~~

~~(8) Playgrounds must be located in areas that maximize safety. The governing body shall provide personnel so that playgrounds are adequately supervised during recess and school sponsored outdoor time. Playground equipment, if provided, shall be located to permit supervision.~~

~~(9) The governing body shall minimize the likelihood of students' contact with stray animals using methods such as the installation of fencing at elementary schools and taking appropriate actions to have removed any stray animals found on the school property. Animals brought by students or teachers for instruction or demonstration purposes are allowed if controlled in a manner that protects students and, if a vaccine is available for that species, the animal has been vaccinated for rabies. Police enforcement dogs, and service animals on duty under the Americans with Disabilities Act or under the provisions of an individualized education plan made pursuant to the Individuals with Disabilities Education Act are allowed on the school grounds.~~

~~(10) If bicycles are permitted at a school, the governing body shall ensure that a designated area for bicycle parking is provided and located where it will not create a safety hazard by obstructing building entry or exit ways, walkways, or vehicular traffic.~~

~~(11) Structures or landscaping must not provide access by unauthorized individuals to the roof of the school.~~

~~R392-200-6. Food Service.~~

~~(1) The design, construction, installation, and operation of food service facilities and equipment shall be in compliance with the Food Service Sanitation Rule R392-100 and local health department regulations. Plans for food service facilities must be submitted by the governing body to the local health department for evaluation and approval prior to the beginning of construction. Any significant modification to the school food service facility that falls within the plan review requirements of R392-100 must be approved by the local health department prior to modification.~~

~~(2) The governing body shall ensure that food provided by the school that is not prepared on site is obtained, transported, and served from approved sources as required by R392-100.~~

~~R392-200-7. Sanitary Facilities and Controls.~~

~~(1) Water Supply.~~

~~(a) The water supply shall meet the requirements of the Utah Department of Environmental Quality. All bottled water supplied or sold by the school shall meet the bottled water requirements of the Utah Department of Agriculture and Food.~~

~~(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing water supply interruption. If the water supply is estimated to be or actually interrupted for four hours or more, the local health officer may require the school to close or have the school provide an alternative source of potable water approved by the local health department.~~

~~(2) Wastewater.~~

~~(a) The governing body shall ensure that all wastewater or water-carried wastes such as water from cleaning garbage cans and dumpsters is disposed of in accordance with rules established by the Utah Department of Environmental Quality.~~

~~(b) The governing body shall notify the local health department as soon as reasonably possible but no longer than four hours after the discovery of a continuing sewer system interruption. If the sewer system is estimated to be or is actually interrupted for four hours or more the local health officer may require the school to be closed or require the school to provide temporary toilet facilities or an alternate wastewater disposal method approved by the local health department and the Utah Department of Environmental Quality.~~

~~(3) Plumbing. The governing body shall ensure that plumbing is sized, installed, and maintained in accordance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah legislature under Section 15A-2-103 and the 2010 Americans with Disability Act (ADA).~~

~~(4) Toilet Rooms.~~

~~(a) Toilet rooms shall be in compliance with the requirements of the most restrictive or specific between the plumbing code adopted by the Utah Legislature under Section 15A-2-103 and the 2010 ADA. With the exception of faculty or staff restrooms, locked toilet rooms are prohibited unless students have access to the number of unlocked toilet rooms as required under the aforementioned plumbing code or the 2010 ADA, whichever is the most stringent or restrictive of the two.~~

~~(b) Self-closing entrance doors shall be provided if privacy is not achieved using shielding to break the line of vision of a person looking into the toilet room from outside the toilet room.~~

~~(c) If a toilet room is designed for use by more than one person at a time, each toilet shall occupy a separate compartment with walls or partitions and a door enclosing the fixture to ensure privacy. The height of the walls or partitions shall allow sufficient light or ventilation therein. The walls or partitions and door shall begin at a height not more than 12 inches from and extend not less than 60 inches above the finished floor surface. A urinal is exempt from the requirements for an enclosure; however, where there are two or more adjacent urinals, there shall be a solid partition installed between adjacent urinals according to the requirements of Plumbing Code.~~

~~(d) In new or extensively remodeled schools, toilet rooms shall be mechanically vented to the outside of the building. A system shall be installed to resupply the air that is exhausted.~~

~~(e) An easily cleanable waste container shall be provided and maintained in each toilet room. At least one conveniently located covered waste receptacles must be provided in toilet rooms used by females nine years and older. Assigned school or contracted personnel shall empty each waste container as often as necessary and at least daily.~~

~~(f) All toilet room fixtures shall be kept clean and maintained in good repair.~~

~~(g) Toilet fixtures shall be provided with a supply of toilet tissue at all times.~~

~~(h) Toilet rooms must be easily accessible and conveniently located for use at all times the school is in session or used for school approved activities, for all school recreational facilities, and for areas utilized for school functions.~~

~~(i) Toilet room walls, floors, and ceilings must be constructed of smooth, non-absorbent, easily cleanable materials. Assigned school or contracted personnel shall keep toilet room walls, floors, and ceilings clean and maintained in good repair.~~

~~(5) Diaper Changing.~~

~~(a) A school attended by students who require changing of diapers by school or designated personnel must have a designated diaper changing area.~~

~~(b) The diapering area shall not be located in a food preparation or eating area.~~

~~(c) The diapering surface must not be used for any other purpose. The diapering station shall have a solid, smooth, non-absorbent surface kept in good repair.~~

~~(d) Child and student diapering stations shall be designed with a raised edge to prevent a child or student from rolling off or falling.~~

~~(e) A privacy area for individuals older than three years of age requiring diaper change must be provided for diaper changing.~~

~~(f) The governing body shall make sure that the school staff members who perform diapering tasks comply with the following requirements:~~

~~(i) Staff members who prepare or serve food shall not change diapers or assist in toilet training.~~

~~(ii) Staff members shall not diaper children directly on the floor.~~

~~(iii) Staff members shall not leave a child or student unattended on the diapering surface.~~

~~(iv) Staff members shall clean and sanitize diapering surfaces after each use, shall use a sanitizer registered by the U.S. Environmental Protection Agency for that purpose and according to the manufacturer's instructions, and shall make sure sanitizer containers are properly labeled and stored in the diaper changing area out of the reach of children and students.~~

~~(v) If a disposable covering is used on the diapering surface, a staff member shall properly dispose of the covering after each diaper change.~~

~~(vi) Staff members shall wash their hands with soap and water immediately after changing a diaper, and before commencing other tasks.~~

~~(vii) Staff members shall place soiled disposable diapers in a container that has a leak proof lining and a tight fitting lid, in a leak proof sealed bag and placed in a container with a tight fitting lid, or placed directly in an outdoor garbage container that has a tight fitting lid. Staff shall clean and sanitize on a daily basis the containers where soiled diapers are placed.~~

~~(viii) If cloth diapers are used, staff members shall not rinse them at the school. After a cloth diaper is changed, a staff member shall place the cloth diaper directly into a leak-proof container or into a sealed bag and placed in a container. The container shall be inaccessible to any child and labeled with the child's name. The staff member may also place the diaper into a leak-proof diapering service container.~~

~~(ix) A staff member shall check each child's diaper at least once every two hours and shall change any child's diaper promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.~~

~~(x) The governing body shall ensure that diaper changing procedures meeting the requirements of this rule are posted in the diaper changing area.~~

~~(6) Handwashing Sinks.~~

~~(a) Handwashing sinks shall be placed in or immediately adjacent to toilet facilities.~~

~~(b) Handwashing sinks shall be located in or conveniently adjacent to classrooms where normal activities require the students to wash their hands either before or after performing the classroom activities. All elementary classrooms, life skills, art, chemistry, biology, auto shop, wood and metal shop, and drama must have handwashing sinks located in or conveniently adjacent to them. Water provided at these locations must be tempered to or adjustable to a minimum of 100 degrees Fahrenheit (37.8 degrees Celsius) and not exceed 110 degrees Fahrenheit (43.3 degrees Celsius).~~

~~(c) Handwashing sinks must be provided at locations where persons are required to handle any liquids that may burn, irritate, or are otherwise harmful to the skin.~~

~~(d) Handwashing sinks shall be at a height appropriate to the children that use them.~~

~~(e) Handwashing sinks with hot and cold water shall be provided with faucets that utilize a mixing valve or a combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for an average of at least 15 seconds without the need to reactivate the faucet.~~

~~(f) Hand cleaning soap or detergent must be conveniently provided near each handwashing sink.~~

~~(g) Disposable sanitary towels shall be provided in a protective dispenser that dispenses one towel at a time or a forced air mechanical hand drying device providing heated air conveniently located near each handwashing sink. If cloth towels are used for hand drying, a towel or segment of a roll cloth towel that has not been used by another person since it was laundered shall be available for each person.~~

~~(h) Handwashing sinks and all related fixtures shall be kept clean and maintained in good repair.~~

~~(7) Shower Facilities.~~

~~(a) Shower Construction.~~

~~(i) Showers for classes in physical education shall be provided if students are required to change clothes. Each shower must be provided with hot and cold water utilizing a mixing valve or combination faucet. Nothing in this section shall prohibit the use of water temperature controls to ensure the safety of the student. A non-skid surface must be installed on shower floors and adjacent floor areas. Shower room walls and ceilings shall be constructed with light colored, smooth, nonabsorbent, and easily cleanable materials.~~

~~(ii) At least one shower head shall be provided for each 15 students utilizing any adjacent dressing area at any one time. A supply of liquid soap for showering must be provided.~~

~~(iii) At least two privacy showers must be provided for schools constructed after January 1, 2012.~~

~~(iv) A dressing room area with non-skid floors and floor drains shall be provided adjacent to shower facilities. Showers shall be constructed to prevent water flow into the drying and dressing room area. Hard surfaced or materials that cannot absorb water must be used for floors, benches, and other furniture in dressing rooms.~~

~~(v) The shower area dressing room shall be mechanically ventilated to the outside of the building and a system to resupply the air that is exhausted must be installed.~~

~~(vi) Toilet rooms and towel racks shall be located convenient to shower and dressing rooms.~~

~~(b) Shower Room Cleaning and Maintenance.~~

~~Shower rooms, dressing rooms, and adjacent areas shall be kept clean and free of clutter. Shower room walls and ceilings shall be kept clean and maintained in good repair. Shower floors shall be cleaned and disinfected daily after school activity use.~~

~~(c) Shower Supplies.~~

~~If students are provided with towels, the towels shall be laundered at least weekly and shall not be shared with another student.~~

~~(8) Drinking Fountains.~~

~~(a) Drinking fountains shall provide a water stream of at least a 2 inch arch into the basin.~~

~~(b) Fountains shall be kept clean and in good repair.~~

~~(c) Drinking fountains are prohibited in areas where contamination from human wastes or toxic or hazardous materials is likely to occur, including toilet rooms and laboratories.~~

~~(d) Drinking fountains shall be installed so the height of the drinking fountain is at the drinking level convenient to students utilizing the drinking fountain.~~

~~(e) Drinking fountains shall be conveniently located and easily accessible for all recreational facilities and areas utilized for school functions.~~

~~(f) Single service and multi use cups provided by the school must meet the requirements of R392-100.~~

~~(9) Swimming Pools.~~

~~Swimming pools at school facilities must be constructed, operated, and maintained in accordance with R392-302.~~

~~(10) Waste Collection, Storage and Disposal.~~

~~(a) Waste containers shall be provided in each classroom.~~

~~(b) For shops, chemistry labs, and similar areas, separate waste containers shall also be provided for each type of waste material not allowed to be disposed with regular municipal waste.~~

~~(c) Solid wastes shall be kept in durable, easily cleanable, insect-resistant and rodent-resistant containers that do not leak and do not absorb liquids.~~

~~(d) A sufficient number and size of containers must be provided to hold all the garbage, refuse, and other waste accumulated between the times when the containers are emptied.~~

~~(e) The governing body shall direct school personnel to clean and repair or replace all waste containers at a frequency that will prevent odors and prevent insect and rodent attraction. Hot water at a minimum of 110 degrees Fahrenheit (43.3 degrees Celsius) and detergent or steam must be provided for washing waste containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage and shall not be allowed to enter any storm drain.~~

~~(f) Storage.~~

~~(i) Waste materials stored on the premises must be located to minimize access to insects, rodents, and other animals and not cause a nuisance. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material that contains no garbage or food wastes need not be stored in covered containers, if such material is protected in an enclosure or baled.~~

~~(ii) Tight-fitting lids, doors, or covers shall be provided on waste containers, refuse bins, compactors, and compactor systems. The lids, doors, or covers shall be kept closed except when emptying or filling. Containers, refuse bins, compactors, and compactor systems used by the school shall be easily cleanable and maintained in good repair. Containers designed with drains shall have drain plugs in place except during cleaning.~~

~~(iii) If waste storage rooms are used, the rooms shall have walls, floors, and ceilings constructed with easily cleanable, nonabsorbent, washable materials that are clean and in good repair. The doors of storage rooms shall be fitted to reduce the entrance of rodents and insects.~~

~~(iv) Outside storage areas or enclosures shall be constructed of easily cleanable materials and shall be kept clean and maintained in good repair. Outside waste containers, refuse bins and compactor systems shall be stored on or above a smooth surface of cleanable material, such as concrete or asphalt, that is kept clean and maintained in good repair.~~

~~(g) Disposal.~~

~~(i) Waste shall be disposed of often enough to prevent the development of odor and minimize the harborage of insects or rodents.~~

~~(ii) The disposal of all waste shall comply with all Utah Division of Solid and Hazardous Waste rules and local health department regulations.~~

~~(11) Hazardous Wastes.~~

~~All hazardous and regulated waste disposal shall comply with the Utah waste management rules and applicable local regulations.~~

~~(12) Pest Management.~~

~~(a) The governing body shall minimize in school buildings or on school grounds the presence of pests that are vectors for disease, carry allergens that are likely to affect individuals with allergies or respiratory problems, or may sting or bite causing mild to serious reactions in some individuals.~~

~~(b) The governing body shall adopt integrated pest management (IPM) practices and principles to prevent unacceptable levels of pest activity with the least possible hazard to people, property, and the environment.~~

~~(c) The governing body shall have a written integrated pest management plan written by the governing body or provided by the contracted pest management contractor whether IPM is implemented as an internal process or contracted to a pest management professional. The plan shall include sections that cover the following topics: an IPM policy statement; IPM implementation and education; pest identification, monitoring procedures, reporting and control practices; approved pesticides; procedures for pesticide use; a policy for the notification of students, parents, and staff; and applicator requirements. Guidance for an IPM plan can be found in publications of the IPM Institute of North America. The Department or the Local Health Officer may require changes in a school's IPM plan if the plan neglects or causes a threat to the health or safety of the occupants of a school.~~

~~(d) The governing body shall use non-chemical management methods whenever possible to provide the desired control. The governing body shall use a full range of control alternatives including: identification and removal or repair of conditions that are conducive to pests; structural repair and sealing; improved sanitation; removal of clutter or harborage; elimination of food sources; exclusionary measures to protect doors, windows and any other opening to the outside against the entrance of insects, rodents, and other animals. A no-action alternative shall also be considered in cases where the pest has no public health or property damage significance.~~

~~(e) If the governing body chooses to not use a contracted pest control contractor, school personnel who apply pesticides shall follow the Utah Dept. of Agriculture pesticide regulation R68-7. The applicator shall apply all products according to the pesticide label directions.~~

R392-200-8. Construction and Maintenance of Physical Facilities.

~~(1) Floors, Walls, and Ceilings.~~

~~All school building floors, walls, and ceilings shall be constructed with materials that are durable and easily cleanable. Floors, walls, and ceilings shall be clean and in good condition.~~

~~(2) Lighting.~~

~~(a) Lighting in all parts of the school building shall have the capability to provide at least the minimum required illumination levels listed in Table I when the building is in use. Permanently fixed artificial light sources must be provided.~~

~~TABLE 1~~

~~MINIMUM REQUIRED ILLUMINATION LEVELS~~

~~Task or Area~~	~~Footcandle Level/Lux~~
~~General instructional areas: Study halls,art rooms, lecture rooms, libraries, and other areas~~	~~50/538~~
~~Special instructional areas: Drafting rooms, laboratories, shops, and other rooms where some fine detail work is done~~	~~100/1076~~
~~Special instruction areas: Sewing and other rooms where fine detail work is done~~	~~100/1076~~

~~Gymnasiums: Auxiliary spaces, shower rooms and locker rooms~~	~~30/323~~
~~Gymnasiums: Main recreation spaces~~	~~50/538~~
~~Auditoriums, faculty and staff lunchrooms, assembly and multi-purpose rooms, andsimilar areas not used for classrooms~~	~~30/323~~
~~Corridors, stairs, hallways, passageways, storerooms, and similar areas~~	~~10/108~~
~~Toilet rooms~~	~~10/108~~
~~Offices~~	~~50/538~~

~~(b) All light fixtures located in shops, life skills, cafeterias, kitchens, food preparation areas, toilet rooms, shower areas, locker rooms, and gymnasiums shall have protective shields to contain broken glass if the bulb or tube is broken or shattered.~~

~~(c) School personnel or contracted persons shall clean and repair light fixtures and replace burned out bulbs or lamps as often as necessary in order to maintain the illumination levels required in this section.~~

~~(3) Ventilation.~~

~~(a) Ventilation throughout the school must be in accordance with the requirements of the mechanical code adopted by the Utah Legislature under Section 15A-2-103.~~

~~(b) Air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials. Vehicles must be prohibited from parking in areas adjacent to and close enough to building air intakes to create a vehicle exhaust hazard and nuisance inside the structure.~~

~~(4) Heating and Cooling.~~

~~(a) Heating facilities must be installed, vented and maintained in a safe working condition. Portable combustion type space heaters are prohibited.~~

~~(b) During cold weather, the governing body shall maintain the occupied areas of the school building at a temperature between 68 and 74 degrees Fahrenheit (20 and 26.3 degrees Celsius. Occupied areas of school buildings used for school activities which because of the nature of the activities require a temperature different from that of a classroom such as ice skating, aerobics, and swimming shall be maintained at the appropriate temperature for the activity. Temperatures shall also be maintained at an appropriate range for any students who qualify under the Individuals with Disabilities Education Act.~~

~~(c) During periods of hot weather when the outside temperature is 90 degrees Fahrenheit or higher when school is in session, the governing body shall employ either an automatic temperature monitoring system or a written plan executed by assigned staff to monitor the temperature of each occupied classroom, occupied auditorium, and occupied gymnasium in a school building. The equipment used for temperature monitoring must have a full range accuracy of plus or minus two degrees Fahrenheit (1.1 degrees Celsius). The frequency of temperature measurement may vary in the programming of the automatic system or in the staff executed temperature monitoring plan based on outside temperatures but must be often enough to assure that occupied areas don't exceed temperature maximums.~~

~~(i) If the temperature readings taken in the classrooms, auditorium, or gymnasium are above 90 degrees Fahrenheit (36.3 degrees Celsius), the time shall be recorded and the temperature continuously monitored by the automatic system or the person measuring the temperature. If the temperature remains above 90 degrees Fahrenheit (36.3 degrees Celsius) for 90 consecutive minutes, the automatic system or person performing the monitoring shall alert the person in charge of the school and the person in charge shall order the removal of all students from the affected areas of the school. The governing body shall not allow students to return to affected areas until the temperature is at or below 79 degrees Fahrenheit (26.1 degrees Celsius). If there are insufficient areas of the school to accommodate students at temperatures below 90 degrees Fahrenheit (36.3 degrees Celsius), then school officials shall provide an alternative environment that meets the above temperature requirement such as providing alternative instructional activities or employing portable cooling equipment. School officials shall notify parents of children with special health care needs.~~

~~(ii) The governing body shall have a written plan that identifies any groups of students that are unusually vulnerable to elevated temperatures and describes actions that will be taken when the recorded temperature in occupied classrooms, auditoriums or gymnasiums reaches 80 degrees Fahrenheit (26.7 degrees Celsius) and above. The written plan may be part of the school's emergency response plan.~~

~~(5) Maintenance of Heating, Ventilation and Air Conditioning Equipment.~~

~~(a) The governing body shall have qualified in-house or contracted service technicians conduct a heating, ventilating, and air-conditioning system inspection and necessary maintenance activities according to manufacturer recommendations at proper time intervals.~~

~~(b) If the school has a boiler or other mechanical units required to be inspected and certified for use, the governing body shall make sure that the most recent boiler inspection certificate is posted in the boiler room. The certificate must be issued by the Utah Division of Boiler and Elevator Safety or an inspector who has been approved and deputized by the Division of Boiler and Elevator Safety.~~

~~(6) Cleaning Physical Facilities.~~

~~(a) The governing body shall make sure that floors, walls, ceilings, and attached equipment are kept clean.~~

~~(b) In new or extensively remodeled schools, at least one utility sink or curbed floor sink shall be located on each floor. The governing body shall make sure personnel who perform cleaning tasks use this area for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of handwashing sinks for this purpose is prohibited.~~

~~(7) Custodian Closets.~~

~~(a) Custodial closets, equipment and supply storage rooms shall be kept clean and orderly and shall be kept locked if toxic supplies are present.~~

~~(b) Storerooms or cabinets shall be provided for cleaning materials, pesticides, paints, flammables, or other hazardous or toxic chemicals, and for tools and maintenance equipment. Materials incompatible due to potential contamination or potential chemical reactions shall be separated from one another. These areas shall be kept locked and not used for any other purpose that is incompatible with the materials stored and shall comply with the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.~~

~~(c) Oiled mops, dust cloths, rags, and other materials subject to spontaneous combustion shall be properly stored in approved fire resistant containers as required by the fire code and any state amendments to the fire code that have been adopted by the Utah State Legislature.~~

~~R392-200-9. Health and Safety.~~

~~(1) Health.~~

~~(a) A centrally located room or area for emergency use in providing care for persons who are ill, injured or suspected of having any contagious disease must be located in each school. In schools built after 1987, a clinic room must be provided and shall have a handwashing sink with hot and cold running water, soap, individual towels, first aid supplies, and lockable cabinet space for storage of first aid supplies. Clinic rooms or areas used for emergency treatment and first aid shall be kept clean and maintained in good repair. The governing body shall have a written plan or policy available for review upon request by the local health department that states how a nurse or doctor can be contacted at any time the school is in session. Prior agreement shall have been made with the doctor or nurse to ensure availability. In addition, at least two designated individuals shall be on site that have a current Red Cross basic first aid and CPR certificate or equivalent training approved by the governing body.~~

~~(b) The governing body of each school shall ensure that:~~

~~(i) each emergency care room or clinic area is provided with a cot or bed that has a cleanable surface or cover;~~

~~(ii) disposable bedding is changed after each person's use; and~~

~~(iii) multi-use sheets or covers are laundered after each person's use.~~

~~(c) All prescription or over the counter medication administered by school personnel, and records required by Section 53G-9-501 shall be stored in a secure refrigerator, drawer, or cabinet accessible only by those authorized to administer the medication.~~

~~(d) If a school has specified sleeping areas, the school shall provide these areas with cots, mats, or floor pads. Reusable covers supplied by the school must be easily cleanable and maintained in good repair. When in use, the covers must be cleaned between each user and at least weekly. Disposable covers must be discarded after each use.~~

~~(e) In high-risk injury areas including shops, laboratories, places where theater props and scenery are built,life skills, playgrounds, and gymnasiums, the instructor must possess at a minimum, a current Red Cross basic first-aid certificate, or equivalent as determined by the governing body, and must be on site at all times when classes are being held. A readily accessible first-aid kit that is appropriate for the risks in the area must be available at the school. School buses shall also carry a first aid kit and bus drivers shall have a current Red Cross basic first aid certificate, or equivalent training as determined by the governing body.~~

~~(2) Safety.~~

~~(a) Instructional, athletic, or recreational equipment shall be kept clean, safe, and in good repair.~~

~~(b) Playground equipment shall be installed and maintained in accordance with the Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Publication Number 325, April 2008 Revision.~~

~~(c) Handrails on stairways, ramps, and outside steps shall be in compliance with the building code adopted by the Utah Legislature under Section 15A-2-103, and shall be properly maintained.~~

~~(d) A master shut-off valve to flammable gas supply lines in science laboratories, life skills areas, shops, and other rooms that utilize gas supply lines, shall be readily accessible to instructors for emergency shut off.~~

~~(e) A master electric shut off switch shall be readily accessible to instructors in life skills areas, shop classrooms, applicable art rooms, and labs where electrically operated instructional equipment are present that may be a safety hazard to the operator.~~

~~(f) All instructional shop classrooms, art rooms, craft rooms, and laboratories shall be kept clean and maintained in good condition. Cleaning and sweeping of these rooms shall be done in a way to minimize dust.~~

~~(g) The governing body of the school shall ensure that specific safety directions accompany substances that are deemed potentially harmful or hazardous to the health and safety of individuals who use them. The directions shall include the proper use, storage, handling and disposal of the substance and the potential risks or hazards associated with the substance. Designated personnel shall ensure that Material Safety Data Sheets (MSDS) for all chemicals used at the school are available at all times for review by staff or students that use the product and for review by the local health or safety inspectors during inspections.~~

~~(h) In high risk injury areas, the class instructor shall ensure that provisions, including the development and posting of operating instructions, regulations, or procedures are posted and reviewed by students in these areas. Students must demonstrate to the instructor knowledge of and safety practices for each piece of equipment prior to any use by the student. The instructor shall ensure that all safety guards are in place and operational on shop equipment.~~

~~(i) The class instructor shall train and direct students operating power equipment to not wear loose clothing including ties, lapels, cuffs, torn clothing or similar garments that can become entangled in power equipment.~~

~~(ii) The class instructor shall train and direct students that wrist watches, rings, or other jewelry are not to be worn in any class where they constitute a safety hazard.~~

~~(iii) The class instructor shall train and direct students to restrain their hair if there is a risk of hair entanglement in moving parts of power equipment.~~

~~(iv) The governing body shall sufficiently control exposure to noise, toxic dusts, gases, mists, fumes, or vapors so that a health hazard does not occur.~~

~~(v) The class instructor shall ensure that appropriate safety equipment is available and train and direct students to wear it while engaged in activities where there is exposure to hazardous conditions.~~

~~(vi) Safety zones shall be outlined on the floor around areas of equipment where there is danger of possible injury to students.~~

~~(vii) Emergency shower or eyewash stations shall be readily available in areas where there is a potential for accidental exposure to corrosive, poisonous, infectious, or irritating materials. The area around this safety equipment shall be kept free of clutter and encumbrances to its immediate use. The design and installation of emergency shower and eyewash stations shall meet the plumbing code adopted by the Utah legislature under Section 15A-2-103.~~

~~(i) Poisonous, dangerous or otherwise harmful plants or animals shall not be kept on the school premises unless it is in conjunction with a course curriculum. Poisonous or toxic plants must be labeled with their scientific name, and a warning sign posted describing the health risks and first aid instructions for skin contact or ingestion. A warning sign shall be posted on the confining area of animals which are likely to carry disease; the sign shall state the disease causing organisms the animal is likely to be infected with and precautions to people should take to avoid disease.~~

~~(j) Flammable liquids, must be stored in a locked fire resistant area with access only by school assigned personnel. The storage area shall comply with the Utah state fire code and rules.~~

~~(k) Oxygen, acetylene, and other high pressure cylinders shall be secured, including empty cylinders, from tipping over. Safety valve hoods shall be kept in place when the tanks are not in use. Unless staged on a welding cart for use, empty or full oxygen and acetylene gas cylinders must be segregated by at least 20 feet or by a fire wall with a 30 minute rating at least five feet high.~~

~~(l) No flammable, explosive, toxic, or hazardous liquids, gases, or chemicals shall be placed, stored, or used in any building or part of a building used for school purposes, except in approved quantities as necessary for use in laboratories, instructional shop classes, and utility rooms. Hazardous liquids or gases shall be stored in tightly sealed containers and hazardous liquids, gases, and chemicals shall be stored in locked safety cabinets or locked storage rooms when not in use.~~

~~(m) Electrical wiring and components shall be maintained in good repair. Electrical panels must maintain a three foot clearance free of obstructions.~~

~~**R392-200-10. Access.**~~

~~The local health department representative, after showing proper identification, shall be granted access to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this rule.~~]

R392-200. Sanitation and Safety of Schools.

R392-200-1. Authority and Purpose.

This rule is authorized under Sections 26-15-2, 26-1-5, and 26-7-1. This rule establishes minimum standards for the design, construction, operation, maintenance, and sanitation of a school, and provides for the prevention and control of hazards associated with a school that are likely to adversely affect public health and wellness including risk factors contributing to injury, sickness, death, disability, and the spread of disease.

R392-200-2. Definitions.

The following definitions apply to this rule:

(1) "ADA" means the Americans with Disabilities Act.

(2) "Building Code" means the edition of the International Building Code adopted under Section 15A-2-103.

(3) "Career and Technical Education (CTE)" means instruction in the areas of family and consumer science, metal machining and welding, woodworking and construction, automotive service and repair, jewelry making, ceramics, robotics, dental hygiene, composites, and print photography.

(4) "Child care center" means a place or business offering nonmedical childcare services for more than three children under six years of age, apart from the children's parents, including a daycare, preschool, or child development home.

(5) "Construction change" means a substantial alteration, modification, or renovation of any portion of a school such that a revision of building plans is warranted.

(6) "Dwelling" means a building or structure that is intended or designed to be used, rented, leased, let or hired out for human habitation.

(7) "Fire Code" means the State Fire Code as adopted in Chapter 15A-5.

(8)(a) "Food establishment" means an operation that stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food to others for human consumption, including a cafeteria or concession stand.

(b) A food establishment includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location.

(c) A food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not time/temperature control for safety foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables; or

(iii) any class in which a student prepares a time/temperature control for safety food that is not intended to be sold or served to another individual.

(9) "Governing body" means the board of education, owner, person designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the school.

(10) "High-risk injury area" means:

(a) a classroom or shop dedicated to the instruction of CTE, chemistry, biology, or art;

(b) a playground or gymnasium; or

(c) any other area designated as such by the local health officer or governing body.

(11) "Home school" means a school located in a private dwelling for the formal instruction of one or more students who have been excused from compulsory education according to the requirements of Section 53G-6-204.

(12) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury. An imminent health hazard may include an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.

(13) "Instructor" means any volunteer or employee educator, licensed or not licensed, responsible for student education at a private or public school.

(14) "IPM" means integrated pest management.

(15) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).

(16) "Local health officer" means the executive director of the jurisdictional local health department or designated representative.

(17) "Mechanical Code" means the edition of the International Mechanical Code adopted under Section 15A-2-103.

(18) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use that threatens the public health or well-being of the public.

(19)(a) "Place of higher education" means a postsecondary institution of learning that provides non-compulsory education, completion of which typically results in a named degree, diploma, or certificate of higher studies.

(b) A higher-educational institution includes any university, college, teacher-training school, junior college, and institute of technology.

(20) "Plumbing Code" means the edition of the International Plumbing Code adopted under Section 15A-2-103.

(21) "Private school" means a school that is owned or operated by a private person, firm, association, organization, or corporation.

(22) "Risk" means any issue that may be likely to adversely affect public health and wellness including factors contributing to injury, sickness, death, disability, and the spread of disease.

(23) "School" means a public or private educational institution including any charter school, elementary school, middle school, or secondary school established to provide education for grades kindergarten through 12 regardless of students' age, including any attached preschool, but excluding home schools.

(24) "Service Animal" has the same meaning as provided in Subpart 35.104 of the Americans with Disabilities Act Title II Regulations.

(25) "Toxic" means any chemical or biological agent the exposure to which may cause an acute or chronic health hazard.

(26) "Vector" means any organism, such as insects or rodents, that transmits a pathogen that can affect public health.

R392-200-3. Applicability.

(1) This rule applies to any school, as defined, and the associated grounds and accessory structures.

(2) This rule does not apply to a:

(a) home school;

(b) child care center;

(c) place of higher education;

(d) professional school; or

(e) trade school.

R392-200-4. General Requirements.

(1) The governing body shall ensure that the school building and grounds are constructed, operated, and maintained in accordance with this rule.

(2) This rule does not require a construction change in any portion of a school if the facility was constructed in compliance with law in effect when the facility was constructed except as specifically provided otherwise in this rule.

(3) Notwithstanding Subsection (2), if the local health officer determines that any condition in a school is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the local health officer may order a construction change consistent with the requirements of this rule to an existing school.

(4) Notwithstanding Subsection (2), if any portion of a school is substantially altered, modified, or renovated, the governing body shall:

(a) submit plans to the local health department before any changes are made; and

(b) ensure that the altered, modified, or renovated portion of the school meets the requirements of this rule.

R392-200-5. Site Standards.

The governing body shall:

(1) before developing plans and specifications for a new school, or the expansion of an existing school, address with the local health department risks associated with the proposed site;

(2) ensure the proposed site is located to minimize the negative influence of railroads, freeways, highways, heavy traffic roads, industrial areas, airports and aircraft flight patterns, fugitive dust, odors, or other areas where auditory problems, malodorous conditions, or safety and health hazards exist; and

(3) submit plans and specifications to the local health department upon request by the local health officer.

R392-200-6. Student Health.

The governing body shall ensure that:

(1) in schools built before 1987, a centrally located clinic area for providing care to students who are ill, injured, or suspected of having any contagious disease is provided that includes:

(a) smooth, non-porous, and easily cleanable flooring;

(b) easily cleanable walls;

(c) a cot or bed that has a cleanable surface or cover with:

(i) disposable bedding that is changed after each person's use; or

(ii) multi-use sheets or covers that are laundered after each person's use; and

(d) the following first aid supplies:

(i) adhesive bandages of various sizes and applications;

(ii) compression bandages;

(iii) sterile gauze pads;

(iv) medical tape;

(v) instant cold packs;

(vi) antiseptic wipes;

(vii) sting relief wipes;

(viii) eyewash solution;

(ix) single-use gloves; and

(x) tweezers.

(2) in schools built after 1987, a permanently designated clinic room is provided that includes, in addition to each item listed in Subsections (1)(a) through (1)(d):

(a) an immediately accessible handwashing sink with hot and cold running water;

(b) liquid soap; and

(c) individual-use towels;

(3) the first aid supplies described in Subsection (1)(d) are:

(a) readily accessible;

(b) securely stored in a manner that prevents contamination and unauthorized use;

(c) not expired; and

(d) restocked as needed;

(4) the clinic room or clinic area is kept clean and maintained in good repair;

(5) any clinic room or clinic area occupied by a student is monitored by school personnel;

(6) a written plan is created that:

(a) states how a nurse or doctor can be contacted at any time the school is in session;

(b) describes the agreement established between the governing body and the nurse or doctor to ensure availability of health care services;

(c) contains copies of the certification required in Subsection (9); and

(d) contains evidence of training completion as required in Subsection (10);

(7) the plan described in Subsection (6) is available for review upon request by the local health officer;

(8) any medication administered to a student by school personnel, and any record required by Section 53G-9-502 is securely stored in a location that is accessible only by those authorized to administer the medication;

(9) at least two individuals are onsite that have current certification from a First Aid and CPR training program approved by the governing body, and proof of certification is conspicuously posted or otherwise made available to the local health officer upon request;

(10) each instructor working in a high-risk injury area or supervising a high-risk activity:

(a) is trained by the governing body in First Aid and CPR principles within the first 30 days of the onset of classes, and each year of employment thereafter;

(b) maintains evidence of First Aid and CPR training completion, and makes it available to the local health officer upon request; and

(c) maintains a readily accessible first aid kit that is appropriate for the risks in the area;

(11) in any class held in a high-risk injury area, an individual or team trained as described in Subsection (9) or (10)(a) has been designated by the governing body to respond first to an injury or medical incident;

(12)(a) each school bus driver is trained by the governing body in First Aid and CPR principles within the first 30 days of the onset of classes, and each year of employment thereafter; and

(b) each school bus is provided with an easily accessible first aid kit;

(13) in each school that provides an automated external defibrillator (AED), First Aid and CPR training as described in Subsections (9) and (10)(a) also includes training on proper AED use; and

(14) in each school that keeps Naloxone (NARCAN) on the school premises, at least two individuals are onsite that have current training on its proper use.

R392-200-7. School Safety.

(1) The governing body shall ensure that:

(a) instructional, athletic, playground, and recreational equipment is kept clean, safe, and in good repair;

(b) playground equipment:

(i) is installed and maintained in accordance with the Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Publication Number 325, November 2010 Revision;

(ii) has no hazardous protrusions;

(iii) has no damaged or missing equipment caps or plugs;

(iv) has no bolts that expose more than two threads beyond the end of the nut;

(v) has no potential clothing entanglement hazards such as open S-hooks or C-hooks;

(vi) has no sharp points, corners, or edges;

(vii) has no crush or shearing points on exposed moving parts; and

(viii) is not installed over concrete, asphalt, or paved surfaces;

(c) if loose-fill material is used as a protective surfacing under playground equipment, a height of a least nine inches of material is maintained while in use, including under heavy use areas such as under swings and at slide exits;

(d) playground areas are free of tripping hazards;

(e) a master shut-off valve to flammable gas supply lines is readily accessible to instructors for emergency shut-off in each room that utilizes flammable gas supply lines;

(f) a master electric shut-off switch is readily accessible to an instructor in any life skills area, shop classroom, applicable art room, or lab where electrically operated instructional equipment is present that may pose a risk of serious injury to the operator;

(g) each instructional shop classroom, art room, craft room, and laboratory is kept clean and maintained in good condition, and cleaned and swept in a way to minimize dust;

(h) a Safety Data Sheet and manufacturer's directions accompany each substance that is deemed potentially harmful or hazardous to the health or safety of an individual who uses it and includes potential risks or hazards;

(i) the documents described in Subsection (1)(h) are available at any time for review by staff, students, and the local health officer;

(j) exposure to excessive noise, hazardous dusts, gases, mists, fumes, or vapors is controlled so a health hazard does not occur;

(k) where the eyes or body of any person may be exposed to injurious corrosive materials, an emergency shower or eyewash station or other suitable facility for quick drenching or flushing of the eyes and body is:

(i) provided within the area for immediate emergency use;

(ii) located in an area that is kept free of clutter and encumbrances to its immediate use;

(iii) designed and installed in compliance with Plumbing Code; and

(iv) inspected and flushed at least quarterly;

(l) written documentation of the inspection described in Subsection (1)(k)(iv) is made available to the local health officer upon request;

(m) any poisonous, dangerous, or otherwise harmful plant or animal is not kept on the school premises unless it is in conjunction with a course curriculum and:

(i) any poisonous or toxic plant that is part of a course curriculum is labeled with:

(A) its common name and scientific name; and

(B) written documentation describing the health risks and first aid instructions for skin contact or ingestion is made available for review to students, staff, and the local health officer upon request; and

(ii) a warning sign is posted on the confining area of each animal that is likely to carry disease that states the proper precautions and hygiene practices for animal care and handling;

(n) each oxygen, acetylene, and other high-pressure cylinder is secured from tipping over and:

(i) each valve safety cap is kept in place when any tank is not in use; and

(ii) unless securely staged on a welding cart for use, oxygen and acetylene gas cylinders are segregated from each other according to Fire Code;

(o) except in a quantity as necessary for student instruction or school facility maintenance, flammable, explosive, toxic, or hazardous chemicals are not stored or used in any building or part of a building used for instructional purposes;

(p) each hazardous chemical is stored:

(i) in a tightly sealed container;

(ii) in an area that is not accessible to unsupervised students; and

(iii) according to its hazard class as follows:

(A) flammability hazard;

(B) reactivity hazard;

(C) corrosive -- contact hazard;

(D) poison -- health hazard; or

(E) not suitably characterized by any of the foregoing categories;

(q) flammable liquid storage of more than 10 gallons is stored in a flammable liquids storage cabinet;

(r) concentrated acids are stored in a dedicated acid cabinet, except that nitric acid is stored separately;

(s) the following explosive substances are not used or stored in a school:

(i) benzoyl peroxide;

(ii) carbon disulfide;
(iii) diisopropyl ether;
(iv) ethyl ether;
(v) picric acid;
(vi) perchloric acid; and
(vii) elemental potassium metal;
(t) chemical storage shelving is secured to the wall or floor;
(u) chemicals are not stored on shelves higher than six feet from ground level;
(v) electrical wiring and any electrical component is maintained in good repair;
(w) each electrical panel has a three-foot clearance free of obstructions;
(x) an extension cord is not:
(i) used as a permanent fixture; or
(ii) connected to an appliance or fixture via one or more additional extension cords or power strips; and
(y) items likely to be a source of risk to the health and safety of students are removed or secured, including:
(i) tall shelves that are not anchored;
(ii) fixtures that are not properly secured or anchored;
(iii) heavy items improperly stored on top of shelves or cabinets;
(iv) excessive clutter; and
(v) damaged electrical outlets or exposed wiring from light fixtures.
(2) In each high-risk injury area, the class instructor shall ensure that:
(a) each student demonstrates to the instructor knowledge of proper use and safety practices for each piece of equipment before the student uses the equipment for the first time;
(b) before use, each equipment safety guard is in place and operational as required in 29 CFR 1910 Subpart O, Machinery and Machine Guarding;
(c) each piece of shop equipment designed for use in a fixed location is:
(i) securely anchored on a foundation sufficient to support the machine; and
(ii) spaced far enough from other fixed shop equipment such that the largest piece of work being made on one machine cannot interfere with the largest piece of work being made at the same time on an adjacent machine; and
(iii) includes at least 28 inches of walking clearance between machines while in operation;
(d) each student and staff person is trained and directed when operating power equipment to:
(i) avoid wearing loose clothing that can become entangled in power equipment;
(ii) avoid wearing a wristwatch, ring, or other jewelry in any area where it may constitute a safety hazard; and
(iii) restrain long hair if there is a risk of hair entanglement in moving parts of power equipment; and
(iv) wear appropriate personal protective equipment;
(e) appropriate personal safety equipment is available;
(f) each student is trained on the proper use of personal safety equipment;
(g) each student uses personal safety equipment while engaged in any activity where there is exposure to a hazardous condition; and
(h) reusable protective eyewear is cleaned and disinfected with an EPA registered disinfectant after each use.

R392-200-8. Construction and Maintenance of Physical Facilities - General.

The governing body shall ensure that:
(1) each school building floor, wall, and ceiling is constructed with materials that are durable and easily cleanable, and maintained in clean and good condition;
(2) each plumbing fixture is sized, installed, and maintained in accordance with the requirements of Plumbing Code, local health department regulations, and the ADA.
(3) roof and plumbing water leaks are repaired and the area cleaned and dried as quickly as possible to discourage mold growth;
(4)(a) lighting in each part of a school building:
(i) is provided using permanently fixed artificial light sources; and
(ii) when measured 30 inches from the floor, has the capability to provide at least the minimum required illumination levels as listed in Table 1 during hours of use;
(b) light fixtures located in each of the following areas are shatter resistant or have a protective shield to contain broken glass if the bulb or tube is broken or shattered:
(i) shops;
(ii) life skills;
(iii) cafeterias;
(iv) kitchens;
(v) food preparation areas;
(vi) toilet rooms;
(vii) shower areas;
(viii) locker rooms; and
(ix) gymnasium;
(c) light fixtures are cleaned and repaired as needed; and
(d) burned out bulbs or lamps are replaced as often as needed to maintain the illumination levels required in this section.

TABLE 1
Minimum Required Illumination Levels

Area	Footcandle Level
General instruction, including classroom, study hall, music room, lecture room, handwritten work area, and library.	35.0
Special instruction -- CTE and high-risk areas	50.0
Gymnasium - auxiliary spaces, shower rooms, and locker rooms	10.0
Gymnasium - main recreation spaces	25.0
Auditorium, faculty and staff lunchroom, assembly and multi-purpose room, and similar room not routinely used for instruction	30.0
Corridor, commons, stairs, hallway, indoor passageway, storeroom, and similar areas	10.0
Toilet room	15.0
Office	35.0
Conference room	30.0
Media center	25.0
Building entrances, parking areas, roads, and similar areas	0.2

(5) when provided, each sleeping area is provided with a cot, mat, or floor pad and that:

(a) each reusable cover supplied by the school is easily cleanable and maintained in good repair;
(b) when in use, the cover is cleaned between each user and at least weekly, if reused by the same student; and
(c) each disposable cover is discarded after use;
(6) carpets, throw rugs, or furniture with a permeable fabric cover used for sitting shall be cleaned every at least other month of use, and as needed when soiled.
(7) items described in Subsections (5) and (6) that require laundering are not washed in laundry facilities that are designated for the school's food establishment.

R392-200-9. Construction and Maintenance of Physical Facilities -- Custodial.
(1) The governing body shall ensure that:
(a) in a new or extensively remodeled school, at least one utility sink or curbed floor sink is provided on each occupied level of the school that is:
(i) used for the cleaning of mops or similar wet floor cleaning tools;
(ii) used for the disposal of mop water or similar liquid wastes;
(iii) conveniently located for authorized personnel use; and
(iv) not used for handwashing;
(b) each utility sink chemical dispenser has a dedicated plumbing line that is not directly connected to the utility sink;
(c) the utility sink or curbed floor sink required in Subsection (1)(a) is provided in addition to any utility sink or curbed floor sink located within in a school food service establishment;
(d) a closet, cabinet, or room is provided for the storage of:
(i) cleaning materials;
(ii) pesticides;
(iii) paints;
(iv) hazardous chemicals; and
(v) tools and maintenance equipment;
(e) the closet, cabinet, or room described in Subsection (1)(d) is kept:
(i) clean;
(ii) orderly; and
(iii) locked when a custodian is not present in the immediate area;
(f) hazardous or toxic chemicals are stored below and away from personal use articles including paper towels, toilet paper, and facial tissues; and
(g) chemical substances and products, as listed in Subsection (1)(d), are sorted and stored according to their specific hazard as described in Subsection R392-200-7(1)(p)(ii)

R392-200-10. Construction and Maintenance of Physical Facilities -- Heating, Ventilation, and Air Conditioning.
The governing body shall ensure that:
(1) air ducts and air filters are maintained to prevent the entrance of dust, dirt, or other contaminating material;
(2) vehicles are prohibited from parking in any area adjacent to and close enough to a building air intake to create a vehicle exhaust hazard or nuisance inside the building;
(3) each room heating fixture is installed, vented, and maintained in a safe working condition, and portable combustion-type space heaters are not used inside a building;
(4) the building temperature is maintained within the occupied areas of the school building:
(a) at a temperature between 68 and 74 degrees Fahrenheit during cold weather as measured from three feet above floor level;
(b) at the appropriate temperature for any school activity that, because of the nature of the activity, requires a temperature different from Subsection (4)(a), including ice skating, swimming, and vigorous exercise; or
(c) at an appropriate range for any student who qualifies under the Individuals with Disabilities Education Act (IDEA);
(5) in the event of extreme heat or extreme cold in an occupied area of the school for 90 consecutive minutes:
(a) the local health department is notified; and
(b) the local health officer is consulted on the proper course of action to take to maintain student health;
(6) a heating, ventilation, and air conditioning system inspection and any necessary maintenance activity is conducted according to the manufacturer's recommendations by qualified individuals;
(7) if the school has a boiler or other mechanical unit required to be inspected and certified for use, the most recent boiler inspection certificate issued by the Boiler, Elevator, and Coal Mine Safety Division at the Utah Labor Commission is posted in a conspicuous area where the local health officer can easily verify that the inspection has been completed and the certification is current;

R392-200-11. Water Supply.
(1) The governing body shall ensure that:
(a) the potable water system within a school, including any drinking fountain, lavatory, shower and food facility is designed, installed, and operated according to the requirements set forth by:
(i) Plumbing Code;
(ii) the Utah Department of Environmental Quality, Division of Drinking Water under Title R309, Drinking Water; and
(iii) local health department regulations;
(b) bottled water supplied or sold by the school meets the bottled water requirements of the Utah Department of Agriculture and Food; and
(c) the local health officer is notified as soon as reasonably possible but no longer than four hours after the discovery of a continuing water supply interruption.
(2) If the water supply is estimated to be or has been interrupted for four hours or more, the local health officer may require the school to close, or provide students and staff with an alternative source of potable water approved by the local health department.

R392-200-12. Wastewater.
(1) The governing body shall ensure that:
(a) sewer services are available in a school;
(b) the local health officer is notified as soon as reasonably possible but no longer than four hours after the discovery of a continuing sewer system interruption;
(c) the school's sewer system is designed, installed, and operated according to the requirements set forth by:
(i) Plumbing Code;
(ii) the Utah Department of Environmental Quality, Division of Water Quality under Title R317, Water Quality;
(iii) local health department regulations; and
(iv) the local sewer district having jurisdiction;
(d) wastewater is discharged to a public sanitary sewer system when practicable; and
(e) where connection to a public sanitary sewer is not practicable, wastewater is discharged to an onsite wastewater

disposal system that has been approved by the local health department or Utah Department of Environmental Quality, according to the requirements of Rule R317-4, Onsite Wastewater Systems.

(2) If the sewer system is estimated to be, or has been interrupted for four hours or more the local health officer may require the school to be closed or require the school to provide temporary toilet facilities as approved by the local health officer.

(3) For any school that installs or uses acidic wastewater neutralization equipment, such as a lime neutralization tank, to neutralize acidic wastewater before it is discharged into the sanitary sewer, the governing body shall ensure that:

(a) neutralization equipment is inspected at least quarterly to ensure proper operation;

(b) neutralization equipment is serviced according to manufacturer's directions; and

(c) inspection and service records are kept and made available to the local health officer upon request.

R392-200-13. Toilet Rooms.

(1) The governing body shall ensure that each toilet room:

(a) complies with Plumbing Code and the ADA;

(b) has walls, floors, and ceiling constructed of smooth, nonabsorbent, easily cleanable materials;

(c) is mechanically vented in accordance with Mechanical Code;

(d) contains an easily cleanable waste container and at least one covered waste receptacle that is accessible from within each toilet fixture enclosure used by females nine years and older;

(e) is kept clean and maintained in good repair, including each plumbing fixture;

(f) is provided with a supply of toilet tissue;

(g) is easily accessible and conveniently located for use:

(i) when the school is in session;

(ii) during school approved activities;

(iii) near school recreational facilities while they are in use; and

(iv) for any other areas utilized for school functions outside of standard hours of use;

(h) is not lockable unless:

(i) students have access to the number of unlocked toilet rooms as required in Plumbing Code and the ADA; or

(ii) the toilet room is restricted to faculty or staff;

(2) The governing body shall ensure that a self-closing entrance door is provided if privacy is not achieved using shielding to break the line of vision of a person looking into the toilet room from outside the toilet room;

(3) The governing body shall ensure that for each toilet room that is designed for use by more than one person at a time:

(a) each toilet occupies a separate compartment with walls or partitions and a door enclosing the fixture to ensure privacy such that:

(i) the height of the walls or partitions allows sufficient light or ventilation therein; and

(ii) the walls or partitions and door begin at a height not more than 12 inches from and extend not less than 60 inches above the finished floor surface; and

(b) there is a solid partition installed to provide privacy according to the requirements of Plumbing Code between adjacent urinals if there are two or more adjacent urinals, and between a urinal and any adjacent handwashing area.

R392-200-14. Handwashing Sinks.

The governing body shall ensure that:

(1) a handwashing sink is placed in or immediately adjacent to each toilet facility;

(2) a handwashing sink is located in or conveniently adjacent to at least the following instruction areas:

(a) elementary classrooms;

(b) life skills classrooms;

(c) art classrooms, except digital media;

(d) chemistry labs;

(e) biology labs;

(f) auto shops;

(g) wood and metal shops;

(h) drama set building areas;

(i) any location where an individual is required to handle a liquid that may burn, irritate, or otherwise harm the skin;

(j) any location where an individual changes a diaper, as specified in Section R392-200-22; and

(k) any location where an individual is required to handle plants or animals.

(3) water provided at a handwashing sink is tempered to or adjustable to a minimum of 100 degrees Fahrenheit and does not exceed 110 degrees Fahrenheit;

(4) each handwashing sink is installed at a height appropriate to the individuals who use it;

(5) each handwashing sink is provided with:

(a) hot and cold water; and

(b) a faucet that utilizes a mixing valve or a combination faucet;

(6) each self-closing, slow-closing, or metering faucet in use is designed to provide a flow of water for a sufficient length of time to rinse both hands;

(7) each handwashing sink and any related fixture is kept clean and maintained in good repair.

(8) hand cleaning soap or detergent is provided at a convenient location near each handwashing sink;

(9) one of the following approved hand drying provisions is conveniently located near each handwashing sink:

(a) disposable paper towels that are:

(i) in a protective dispenser; and

(ii) dispensed one towel at a time;

(b) a forced-air mechanical hand-drying device that provides heated air; or

(c) cloth towels if a towel or segment of a roll cloth towel is:

(i) provided to each person; and

(ii) laundered after use;

R392-200-15. Shower Facilities.

The governing body shall ensure that:

(1) a shower facility is provided:

(a) for classes in physical education if students are required to change clothes;

(b) with hot and cold water at each shower head utilizing a mixing valve or combination faucet;

(c) with at least two privacy showers for schools constructed after January 1, 2012;

(d) with sufficient shower fixtures to accommodate the number of individuals who wish to shower at any one time, including the two shower heads required in Subsection (1)(c), as applicable;

(e) with a supply of liquid soap made available as needed;
(f) with a conveniently located toilet room;
(g) with towel racks or hooks; and
(h) with a ventilation system installed and maintained in accordance with Mechanical Code;
(2) each shower facility is constructed:
(a) to prevent water flow into drying or dressing areas; and
(b) with smooth, nonabsorbent, and easily cleanable materials;
(3) a dressing room area is provided adjacent to each shower facility that is constructed:
(a) with a non-skid floor sloped to drain;
(b) with functioning floor drains; and
(c) with hard surfaces or materials that cannot absorb water;
(4) each shower facility, dressing room, and adjacent area is kept clean and free of clutter;
(5) each shower facility wall, ceiling, and fixture is kept clean and maintained in good repair;
(6) shower floors are cleaned and disinfected daily, as needed, after any school activity use; and
(7) if any student is provided with a towel, each towel is laundered at least weekly and is not shared with another student.

R392-200-16. Drinking Fountains.
(1) The governing body shall ensure that each drinking fountain is:
(a) installed and maintained according to the requirements of Plumbing Code;
(b) capable of providing a water stream of at least a two-inch arch into the basin;
(c) kept clean and in good repair;
(d) located in an area where contamination from human wastes or toxic or hazardous materials is not likely to occur, including a toilet room or laboratory;
(e) installed so the height of the water stream is at the drinking level convenient to students utilizing the fixture; and
(f) conveniently located and easily accessible for each recreational facility and area utilized for school functions.
(2) The governing body shall ensure that:
(a) each of the following, if provided by the school, meet the requirements of Rule R392-100, Food Service Sanitation:
(i) single service and multi-use cups;
(ii) water coolers; and
(iii) portable water dispensers;
(b) the flooring under each drinking fountain is smooth, non-porous, and easily cleanable; and
(c) each water dispensing fixture is maintained according to the manufacturer's directions.

R392-200-17. School Grounds.
The governing body shall ensure that:
(1) school ground fencing is constructed of smooth materials with no barbs or projections and is maintained in good repair;
(2) mechanical equipment, electrical transmission lines, poles, transformer boxes, and other electrical equipment are located or protected with a barrier to prevent an electrical or other safety hazard;
(3) walkways are:
(a) provided between the school building and other buildings on the school grounds;
(b) graded to allow proper drainage and safe passage; and
(c) maintained in good repair and free of a buildup of snow or ice;
(4) each parking area is maintained in good repair and free of a buildup of snow or ice;
(5) a lawn sprinkler head does not create a hole or trip hazard on a playground or other recreational area;
(6) each service road, parking area, and walkway is constructed and located to facilitate the safe movement of vehicular and pedestrian traffic;
(7) items likely to be a source of risk to health and safety are removed, including weeds, holes, broken glass, or broken or cut tree limbs, and that excavations or ditches are filled;
(8) playgrounds are adequately supervised during recess and school sponsored outdoor time;
(9) playground equipment, if provided, is located to permit supervision and away from risks not normally associated with playground equipment;
(10) the likelihood of a student coming into contact with an animal is minimized by:
(a) the installation of fencing at each elementary school;
(b) except for a classroom pet approved by the governing body, ensuring that an animal is only brought to the school by a student or teacher for instruction or demonstration purposes; and
(c) taking action to remove any dog found on the school property except:
(i) a dog as allowed in Subsection (10)(b) if the dog is controlled in a manner that protects students and the dog has been vaccinated for rabies; or
(ii) a police enforcement dog, or service animal on duty under ADA or under an authorized individualized education plan made pursuant to the Individuals with Disabilities Education Act;
(11) if bicycles or other transportation devices are permitted at a school, a designated area is provided and located where it will not create a safety hazard by obstructing building entry or exit ways, walkways, or vehicular traffic; and
(12) roof access is restricted to authorized users only, and inaccessible to students.

R392-200-18. Pest Management.
(1) The governing body shall:
(a) minimize in school buildings or on school grounds the presence of any pest that:
(i) is a vector for disease;
(ii) carries an allergen that is likely to affect an individual with allergies or respiratory problems; or
(iii) may sting or bite, causing a mild to serious reaction in some individuals;
(b) adopt IPM practices and principles to prevent harmful levels of pest activity on the school premises with the lowest possible risk to people, property, and the environment by adopting and implementing an IPM plan written by the governing body or the contracted pest management entity that contains the following topics:
(i) an IPM policy statement;
(ii) IPM implementation and education;
(iii) pest identification, monitoring procedures, reporting and control practices;
(iv) approved pesticides for school use;
(v) procedures for pesticide use;
(vi) a policy for the notification of students, parents, and staff; and
(vii) pesticide applicator requirements;

(c) use non-chemical management methods when possible to provide the desired control; and

(d) use a full range of control alternatives including:

(i) identification and removal or repair of conditions that are conducive to pests;

(ii) structural repair and sealing;

(iii) improved sanitation;

(iv) removal of clutter or harborage;

(v) elimination of food sources;

(vi) exclusionary measures to protect doors, windows and any other opening to the outside against the entrance of insects, rodents, and other animals; and

(vii) taking no action when the pest does not create a nuisance, or has no public health or property damage significance.

(2) The plan described in Subsection (1)(b) shall be made available to the local health officer upon request.

(3) The governing body shall ensure that:

(a) if the governing body chooses to not use a contracted pest control contractor, school personnel who apply pesticides comply with the Utah Department of Agriculture and Food Rule R68-7, Utah Pesticide Control Rule; and

(b) a pesticide applicator at a school only applies a pesticide according to the labeled directions.

(4) A local health officer may require modification of an IPM plan if the plan fails to adequately address risks to the health or safety of school occupants.

R392-200-19. Food Service.

The governing body shall ensure that each food establishment operates in compliance with Rule R392-100, Food Service Sanitation, and local health department regulations;

R392-200-20. Swimming Pools.

The governing body shall ensure that a swimming pool at a school is designed, constructed, operated, and maintained in accordance with Rule R392-302, Design, Construction and Operation of Public Pools.

R392-200-21. Boarding and Lodging.

The governing body shall ensure that each student boarding room is constructed and operated according to the requirements of Sections R392-502-7 and R392-502-9.

R392-200-22. Waste Collection, Storage, and Disposal.

(1) The governing body shall ensure that:

(a) a waste container is provided in each classroom;

(b) for a shop, chemistry lab, and similar area, a separate waste container is provided for each type of waste material not allowed to be disposed with regular municipal waste;

(c) solid waste is kept in a durable, easily cleanable, insect and rodent resistant container that does not leak or absorb liquids;

(d) a sufficient number and size of containers are provided to hold any solid waste accumulated between the times when the containers are emptied;

(e) each waste container is cleaned, repaired, or replaced at a frequency that will prevent odors and insect or rodent attraction;

(f) liquid waste from compacting or cleaning operations is disposed of as sewage and not in a storm drain;

(g) except as in Subsection (2), waste:

(i) is stored and located to minimize access to insects, rodents, other animals, and to not cause a nuisance;

(ii) that is contained in plastic bags, wet strength paper bags, or baled units is not stored outdoors without being protected in an enclosure and closeable container if the waste contains garbage, refuse, or food waste; and

(iii) is disposed of:

(A) often enough to prevent the development of odor and to minimize the harborage of insects or rodents; and

(B) in accordance with Utah Division of Solid and Hazardous Waste rules and local health department regulations;

(h) hazardous and regulated waste disposal complies with the Utah waste management rules and applicable local regulations;

(i) a tight-fitting lid, door, or cover:

(i) is provided on each waste container, refuse bin, compactor, and compactor system; and

(ii) is kept closed except when emptying or filling;

(j) a container, refuse bin, compactor, and compactor system used by the school is easily cleanable and maintained in good repair;

(k) a container designed with drains has a drain plug in place for each drain except during cleaning;

(l) a waste storage room, if used, has:

(i) walls, floors, and ceilings constructed with easily cleanable, nonabsorbent, washable materials that are clean and in good repair; and

(ii) doors that are fitted to reduce the entrance of rodents and insects;

(m) each outside storage area or enclosure is:

(i) constructed of easily cleanable materials;

(ii) kept clean; and

(iii) maintained in good repair; and

(n) each outside waste container, refuse bin and compactor system is stored on or above a solid surface of cleanable material, including concrete or asphalt, that is kept clean and maintained in good repair.

(2) Waste material, including packaging material or cardboard, that contains no garbage, refuse, or food waste may be stored in an enclosure or baled and not in a container.

R392-200-23. Diapering Assistance in Child Care and ADA.

If the school provides diapering assistance for children or ADA students who wear diapers, the governing body shall ensure that:

(1) diaper changing procedures meeting the requirements of this section are posted in the diaper changing area and that they are followed;

(2) the school has a designated diaper changing area that:

(a) is not located in the immediate vicinity of a food preparation or food service area;

(b) is not used for any other purpose while diaper changing procedures are being performed; and

(c) includes a privacy area for any individual who is older than three years of age including:

(i) an area that can be screened off;

(ii) a lockable toilet room; or

(iii) a lockable stall within a toilet room;

(3) the diapering surface and floor area is designed with a smooth, nonabsorbent surface kept in good repair;

(4) children are not diapered directly on the floor;

(5) a person being diapered is not left unattended on an elevated diapering surface;

(6) each diapering surface is cleaned and disinfected after each use with a disinfectant that is:
(a) registered by the U.S. Environmental Protection Agency;
(b) labeled for surface disinfection;
(c) used according to the manufacturer's instructions;
(d) maintained in a properly labeled container; and
(e) stored in a secured location out of the reach of diapered children and students, but accessible to any individual who performs diapering services;
(7) individuals who perform diapering tasks immediately wash their hands with soap and water after changing a diaper and before commencing other tasks, including food handling;
(8) each soiled disposable diaper is placed in an indoor or outdoor container with a tight-fitting lid;
(9) soiled cloth diapers are not rinsed at the school, and are placed directly into:
(a) a leak-proof container; or
(b) a sealed bag and a container that is:
(i) inaccessible to any child; and
(ii) labeled with the child's name; or
(c) a leak-proof diapering service container;

R392-200-24. Inspections and Investigations.
Upon presenting proper identification, the governing body shall permit a local health officer to enter the school or premises to perform inspections, investigations, and other actions as necessary to ensure compliance with this rule.

R392-200-25. Closing or Restricting Use of a School.
(1) If a local health officer deems a school or portion thereof to be an imminent health hazard, the school may be closed or its use may be restricted, as determined by the local health officer.
(2) The governing body shall restrict public access to the impacted area of any school closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.
(3) The governing body may not allow the public to utilize any school or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

R392-200-26. Severability.
If a provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

KEY: public health, schools, sanitation
Date of Last Change: 2022[~~May 31, 2018~~]
Notice of Continuation: October 21, 2021
Authorizing, and Implemented or Interpreted Law: 26-15-2; 26-1-30(9); 26-1-30(23); 26-1-5; 26-7-1

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R414-49**	**Filing ID 54720**

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The purpose of this change is to allow for posterior resin-based composite fillings based on appropriations from H.B. 2 passed in the 2022 General Session.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This amendment implements, as a covered service, posterior resin-based composite fillings. It also makes other technical changes.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

Based on new appropriations for dental services, there is an increase to the state budget of about $444,700. This figure is calculated under a building block to cover about 179,600 children and 6,600 pregnant women.

B) Local governments:

There is no impact on local governments because they neither fund nor provide dental services under the Medicaid program.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

About 1,085 small businesses may see a share of $444,700 in total revenue with the new dental service, based on a 70% share of annual appropriations.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

About 310 non-small businesses may see a share of $444,700 in total revenue with the new dental service, based on a 20% share of annual appropriations.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

About 155 other providers or entities may see a share of $444,700 in total revenue with the new dental service, based on a 10% share of annual appropriations.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs as this change can only increase out-of-pocket savings to an eligible Medicaid member.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Some businesses will see an increase in revenue with this new dental service. Tracy Gruber, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2023**	**FY2024**	**FY2025**
State Government	$444,700	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$444,700**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$311,290	$0	$0
Non-Small Businesses	$88,940	$0	$0
Other Persons	$44,470	$0	$0
Total Fiscal Benefits	**$444,700**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26-1-5	Section 26-18-3	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	**Date:**	06/29/2022

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental, Oral, and Maxillofacial Surgeons and Orthodontia.
R414-49-1. Introduction.

The Medicaid Dental Program provides a scope of dental services for Medicaid [~~recipients~~]members in accordance with the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Utah Medicaid State Plan, as incorporated into Section R414-1-5.

R414-49-2. Definitions.

(1) In addition to the definitions in Rule R414-1 and the Utah Medicaid Provider Manual, Section I: General Information, the following definitions apply to this rule:

(a) "Anterior tooth" means tooth numbers:
(i) 6 through 11;
(ii) 22 through 27;
(iii) C through H; and
(iv) M through R.

(b) "Dental services" whether furnished in the office, a hospital, a skilled nursing facility, or elsewhere, means covered services performed within the scope of the Medicaid[~~-~~]-enrolled dental provider's license as defined in Title 58, Occupations and Professions.

(c) "Posterior tooth" means tooth numbers:
(i) 1 through 5;
(ii) 12 through 21;
(iii) 28 through 32;
(iv) A through B;
(v) I through L; and
(vi) S through T.

R414-49-3. Early and Periodic Screening, Diagnostic, and Treatment (EPSDT).

This section defines the scope of dental services available to members who are eligible under the EPSDT program, and includes comprehensive and preventive health care services.

(1) The following [~~P~~]program [~~A~~]access [~~R~~]requirement[~~s~~] applies.

(a) Dental services are available only through an enrolled dental provider that complies with [~~all~~]relevant laws and policy.

(2) The following [~~C~~]coverage and [~~L~~]limitations apply.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid [~~will~~]reimburses one evaluation [~~per~~]for one member [~~per~~]each day, even if more than one provider is involved from the same office or clinic. Medicaid does not cover [~~M~~]multiple exams for the same date of service[~~ are not covered~~].

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third-molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

[~~(a) Composite resin fillings on posterior teeth;~~]

([~~b~~]a) [~~C~~]cast crowns, [~~(~~]porcelain fused to metal[~~)~~], on posterior permanent teeth or on primary teeth;

([~~c~~]b) [~~P~~]pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

([~~d~~]c) [~~F~~]fixed bridges or pontics;

([~~e~~]d) [~~A~~]all types of dental implants;

([~~f~~]e) [~~T~~]tooth transplantation;

([~~g~~]f) [~~R~~]ridge augmentation;

([~~h~~]g) [~~O~~]osteotomies;

([~~i~~]h) [~~V~~]vestibuloplasty;

([~~j~~]i) [~~A~~]alveoloplasty;

([~~k~~]j) [~~O~~]occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

([~~l~~]k) [~~T~~]treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

([~~m~~]l) [~~P~~]procedures such as arthrostomy, meniscectomy, or condylectomy;

([~~n~~]m) [~~N~~]nitrous oxide analgesia;

([~~o~~]n) [~~H~~]house calls;

([~~p~~]o) [~~C~~]consultation or second opinions not requested by Medicaid;

([~~q~~]p) [~~S~~]services provided without prior authorization;

([~~r~~]q) [~~G~~]general anesthesia for removal of an erupted tooth;

([~~s~~]r) [~~O~~]oral sedation for behavior management;

([~~t~~]s) [~~T~~]temporary dentures or temporary stayplate partial dentures;

([~~u~~]t) [~~L~~]limited orthodontic treatment, including removable appliance therapies;

([~~v~~]u) [~~R~~]removable appliances in conjunction with fixed banded treatment; and

([~~w~~]v) [~~E~~]extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) The following [~~D~~]dental [~~S~~]spend-[~~U~~]ups apply.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:

[~~(i) Covered amalgam fillings to non-covered composite resin fillings;~~

~~(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or~~]

([~~ii~~]i) [~~C~~]covered anterior stainless steel crowns that are [~~(~~]deciduous[~~)~~], to non-covered anterior stainless steel crowns with [~~facings (~~]composite facings added or commercial or lab-prepared facings[~~)~~].

R414-49-4. Pregnant Members.

This section defines the scope of dental services available to pregnant members who are eligible for Traditional Medicaid.

Dental services extend for a 60-day period after the pregnancy ends and any remaining days in the month in which the 60 days lapse.

(1) The following [~~P~~]program [~~A~~]access [~~R~~]requirement[~~s~~] applies.

(a) Dental services are available only through an enrolled dental provider that complies with [~~all~~]relevant laws and policy.

(2) The following [~~C~~]coverage and [~~L~~]limitations apply.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid [~~will~~]reimburses one evaluation [~~per~~]for one member [~~per~~]each day, even if more than one provider is involved from the same office or clinic. Medicaid does not cover [~~M~~]multiple exams for the same date of service[~~ are not covered~~].

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third[-]-molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

[~~(a) Composite resin fillings on posterior teeth;~~]

([~~b~~]a) [~~C~~]cast crowns, [~~(~~]porcelain fused to metal[~~)~~], on posterior permanent teeth or on primary teeth;

([~~c~~]b) [~~P~~]pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

([~~d~~]c) [~~F~~]fixed bridges or pontics;

([~~e~~]d) [~~A~~]all types of dental implants;

([~~f~~]e) [~~T~~]tooth transplantation;

([~~g~~]f) [~~R~~]ridge augmentation;

([~~h~~]g) [~~O~~]osteotomies;

([~~i~~]h) [~~V~~]vestibuloplasty;

([~~j~~]i) [~~A~~]alveoloplasty;

([~~k~~]j) [~~O~~]occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

([~~l~~]k) [~~T~~]treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

([~~m~~]l) [~~P~~]procedures such as arthrostomy, meniscectomy, or condylectomy;

([~~n~~]m) [~~N~~]nitrous oxide analgesia;

([~~o~~]n) [~~H~~]house calls;

([~~p~~]o) [~~C~~]consultation or second opinions not requested by Medicaid;

([~~q~~]p) [~~S~~]services provided without prior authorization;

([~~r~~]q) [~~G~~]general anesthesia for removal of an erupted tooth;

([~~s~~]r) [~~O~~]oral sedation for behavior management;

([~~t~~]s) [~~T~~]temporary dentures or temporary stayplate partial dentures;

([~~u~~]t) [~~L~~]limited orthodontic treatment, including removable appliance therapies;

([~~v~~]u) [~~R~~]removable appliances in conjunction with fixed banded treatment; and

([~~w~~]v) [~~E~~]extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) The following [~~D~~]dental [~~S~~]spend-[~~U~~]ups apply.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedure[~~s~~]:

[~~(i) Covered amalgam fillings to non-covered composite resin fillings;~~

~~(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or~~]

([~~ii~~]i) [~~C~~]covered anterior stainless steel crowns that are [~~(~~]deciduous[~~)~~], to non-covered anterior stainless steel crowns with [~~facings (~~]composite facings added or commercial or lab-prepared facings[~~)~~].

R414-49-5. Blind or Disabled Members.

This section defines the scope of dental services available to blind or disabled members eligible for Traditional Medicaid who are 18 years of age or older, as defined in Subsection 1614(a) of the Social Security Act. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) The following program access requirements apply[~~:~~].

(a) [~~d~~]Dental services are available only through an enrolled dental provider that complies with [~~all~~]relevant laws and policy[~~;~~].[~~ and~~]

(b) A dental provider may only perform[~~dental~~] services [~~provided~~]to this population [~~shall only be performed~~]through the University of Utah School of Dentistry (SOD) and [~~their~~]its associated in-state provider network.

(2) The following coverage and limitations [~~provisions~~]apply:

(a) dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid;

(b) dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions;

(c) additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, and are updated in the Medicaid Information Bulletin;

(d) Medicaid [~~will~~]reimburses one evaluation [~~per~~]for one member [~~per~~]each day, even if more than one provider is involved from the same office or clinic, not multiple exams for the same date of service;

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture;

(f) Medicaid may cover third-molar extractions when at least one of the third molars has documented pathology that requires extraction, and by discretion, a provider may remove the remaining third molars during the same procedure;

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments; and

(h) a laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(3) Medicaid does not cover the following types of dental services:

[~~(a) composite resin fillings on posterior teeth;~~]

([~~b~~]a) pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

([~~c~~]b) fixed bridges or pontics;

([~~d~~]c) all types of dental implants;

([~~e~~]d) tooth transplantation;

([~~f~~]e) ridge augmentation;

([~~g~~]f) osteotomies;

([~~h~~]g) vestibuloplasty;

([~~i~~]h) alveoloplasty;

([~~j~~]i) occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

([~~k~~]j) treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

([~~l~~]k) procedures such as arthrostomy, meniscectomy, or condylectomy;

([~~m~~]l) nitrous oxide analgesia;

([~~n~~]m) house calls;

([~~o~~]n) consultation or second opinions not requested by Medicaid;

([~~p~~]o) services provided without prior authorization;

([~~q~~]p) general anesthesia for removal of an erupted tooth;

([~~r~~]q) oral sedation for behavior management;

([~~s~~]r) temporary dentures or temporary stayplate partial dentures;

([~~t~~]s) limited orthodontic treatment, including removable appliance therapies;

([~~u~~]t) removable appliances in conjunction with fixed banded treatment; and

([~~v~~]u) extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

[~~(4) The following dental spend-ups apply:~~

~~(a) a Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:~~

~~(i) covered amalgam fillings to non-covered composite resin fillings; and~~

~~(ii) covered stainless steel, porcelain, and cast crowns to cast gold crowns, which means porcelain fused to metal.~~]

R414-49-6. Targeted Adult Medicaid (TAM).

This section defines the scope of dental services available to eligible targeted adult Medicaid members who are actively receiving treatment in a substance abuse treatment program as defined in Section 62A-2-101, licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) The following program access requirements apply[~~:~~].

(a) [~~d~~]Dental services are available only through an enrolled dental provider that complies with [~~all~~]relevant laws and policy[~~;~~].[~~and~~]

(b) A dental provider may only perform[~~dental~~] services [~~provided~~]to this population [~~shall only be performed~~]through the [~~University of Utah School of Dentistry~~]SOD and [~~their~~]its associated in-state provider network.

(c) Before performing any dental services, SOD shall obtain verification of active treatment for substance use disorder (SUD) from the substance abuse treatment program. The SOD shall then submit an SUD verification form to Medicaid for each eligible TAM member. The SUD verification form is available in "All Providers General Attachments" on the Utah Medicaid website at https://medicaid.utah.gov.

(2) The following coverage and limitations [~~provisions~~]apply:

(a) dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid;

(b) dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions;

(c) additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, and are updated in the Medicaid Information Bulletin;

(d) Medicaid [~~will~~]reimburses one evaluation [~~per~~]for one member [~~per~~]each day, even if more than one provider is involved from the same office or clinic, not multiple exams for the same date of service;

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture;

(f) Medicaid may cover third-molar extractions when at least one of the third molars has documented pathology that requires extraction, and by discretion, a provider may remove the remaining third molars during the same procedure;

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments;

(h) a laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services; and

(i) Medicaid covers porcelain crowns and cast crowns. Cast crowns are porcelain fused to metal.

(3) Medicaid does not cover the following types of dental services:

[~~(a) composite resin fillings on posterior teeth;~~]

([~~b~~]a) pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

([~~c~~]b) fixed bridges or pontics;

([~~d~~]c) all types of dental implants;

([~~e~~]d) tooth transplantation;

([~~f~~]e) ridge augmentation;

([~~g~~]f) osteotomies;

([~~h~~]g) vestibuloplasty;

([~~i~~]h) alveoloplasty;

([~~j~~]i) occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

([~~k~~]j) treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

([~~l~~]k) procedures such as arthrostomy, meniscectomy, or condylectomy;

([~~m~~]l) nitrous oxide analgesia;

([~~n~~]m) house calls;

([~~o~~]n) consultation or second opinions not requested by Medicaid;

([~~p~~]o) services provided without prior authorization;

([~~q~~]p) general anesthesia for removal of an erupted tooth;

([~~r~~]q) oral sedation for behavior management;

([~~s~~]r) temporary dentures or temporary stayplate partial dentures;

([~~t~~]s) limited orthodontic treatment, including removable appliance therapies;

([~~u~~]t) removable appliances in conjunction with fixed banded treatment; and

([~~v~~]u) extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

[~~(4) The following dental spend-ups apply:~~

~~(a) a Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:~~

~~(i) covered amalgam fillings to non-covered composite resin fillings; and~~

~~(ii) covered stainless-steel, porcelain, and cast crowns to cast gold crowns, which means porcelain fused to metal.~~]

R414-49-7. Aged Members.

This section defines the scope of dental services available to aged members eligible for Traditional Medicaid who are 65 years of age or older, as defined in 42 U.S.C Sec. 1382c(a)(1)(A). Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) The following program access requirements apply[~~:~~].

(a) [~~d~~]Dental services are available only through an enrolled dental provider that complies with [~~all~~]relevant laws and policy[~~;~~].[~~and~~]

(b) A dental provider may only perform[~~dental~~] services [~~provided~~]to this population [~~shall only be performed~~]through the [~~University of Utah School of Dentistry~~]SOD and [~~their~~]its associated in-state provider network.

(2) The following coverage and limitation provisions apply:

(a) dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid;

(b) dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions;

(c) additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, and are updated in the Medicaid Information Bulletin;

(d) Medicaid [~~will~~]reimburses one evaluation [~~per~~]for one member [~~per~~]each day, even if more than one provider is involved from the same office or clinic, not multiple exams for the same date of service;

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture;

(f) Medicaid may cover third-molar extractions when at least one of the third molars has documented pathology that requires extraction, and by discretion, a provider may remove the remaining third molars during the same procedure;

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments;

(h) a laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services;

(i) Medicaid covers porcelain crowns and cast crowns. Cast crowns are porcelain fused to metal.

(3) Medicaid does not cover the following types of dental services:

[~~(a) composite resin fillings on posterior teeth;~~]

([~~b~~]a) pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

([~~c~~]b) fixed bridges or pontics;

([~~d~~]c) all types of dental implants;

([~~e~~]d) tooth transplantation;

([~~f~~]e) ridge augmentation;

([~~g~~]f) osteotomies;

([~~h~~]g) vestibuloplasty;

([~~i~~]h) alveoloplasty;

([~~j~~]i) occlusal appliances, habit control appliances, or interceptive orthodontic treatment;

([~~k~~]j) treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

([~~l~~]k) procedures such as arthrostomy, meniscectomy, or condylectomy;

([~~m~~]l) nitrous oxide analgesia;

([~~n~~]m) house calls;

([~~o~~]n) consultation or second opinions not requested by Medicaid;

([~~p~~]o) services provided without prior authorization;

([~~q~~]p) general anesthesia for removal of an erupted tooth;

([~~r~~]q) oral sedation for behavior management;

([~~s~~]r) temporary dentures or temporary stayplate partial dentures;

([~~t~~]s) limited orthodontic treatment, including removable appliance therapies;

([~~u~~]t) removable appliances in conjunction with fixed banded treatment; and

([~~v~~]u) extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

[~~(4) The following dental spend-ups apply:~~

~~(a) a Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:~~

~~(i) covered amalgam fillings to non-covered composite resin fillings; and~~

~~(ii) covered stainless-steel, porcelain, and cast crowns to cast gold crowns, which means porcelain fused to metal.~~]

R414-49-8. Emergency Dental.

This section defines the scope of dental services available to members who are otherwise eligible under the Medicaid program.

(1) The following [~~P~~]program [~~A~~]access [~~R~~]requirement[~~s~~] applies.

(a) Dental services are available only through an enrolled dental provider that complies with [~~all~~]relevant laws and policy.

(2) The following [~~C~~]coverage and [~~L~~]limitations apply.

(a) Emergency dental services are the treatment of a sudden and acute onset of a dental condition that requires immediate treatment, [~~where~~]when delay in treatment would jeopardize or cause permanent damage to a person's dental or medical health.

(b) Emergency dental service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

KEY: Medicaid
Date of Last Change: 2022[~~January 1, 2021~~]
Notice of Continuation: May 31, 2019
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R426-6**	**Filing ID 54719**

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Emergency Medical Services	
Room no.:	2438	
Building:	Cannon Health Building	
Street address:	244 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141010	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Guy Dansie	801-560-1544	gdansie@utah.gov
Emily Sagers	801-538-6622	esagers@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R426-6. Emergency Medical Services Per Capita and Competitive Grant Programs Rules

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The amendments reflect changes in the Emergency Medical Services Grants Program. They also align this rule with legislative updates from H.B. 289 passed in the 2020 General Session to Title 26, Chapter 8a, the Emergency Medical Services Act.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The amendments clarify the process for rural Emergency Medical Services (EMS) grants and the eligibility of the applicants.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendments do not affect the state budget. The state administers the grants and is not a grant recipient.

B) Local governments:

The amendments affect local governments that are considered eligible as an Emergency Medical Services grant recipient. The funding allocated by Title 26, Chapter 8a, the Emergency Medical Services Act are already available. The amendments do not directly affect the amount, only the eligibility requirements and award process.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

One small business is considered an eligible Emergency Medical Services grant recipient. The funding allocated by Title 26, Chapter 8a, the Emergency Medical Services Act are already available. The amendments do not directly affect the amount, only the eligibility requirements and award process.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

Non-small businesses are considered as part of the eligible Emergency Medical Services grant recipients. The funding allocated by Title 26, Chapter 8a, the Emergency Medical Services Act are already available. The amendments do not directly affect the amount, only the eligibility requirements and award process.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

All eligible Emergency Medical Services grant recipients are part of a local government, non-small business, or a small business.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

The amendments do not require additional costs for application or qualification to receive Emergency Medical Services grants.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule sets out the requirements for the EMS per capita grant funds and competitive grant funds. The amendments clarify the eligibility for and process for rural EMS grants and makes changes to align with legislative updates to the Emergency Medical Services Act in Title 26, Chapter 8a.

There is no fiscal impact on businesses because it does not change regulations for EMS business or affect the amount of the awards for eligible applicants. Tracy Gruber, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26-8a-207

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 08/15/2022

10. This rule change MAY become effective on: 08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	**Date:**	06/29/2022

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-6. Emergency Medical Services Per Capita Grants and Competitive Grants [~~Programs Rules.~~]Program.

R426-6-100. Authority and Purpose.

(1) [~~This rule is established under Title 26 Chapter 8a.~~]Authority for this rule is found in Title 26, Chapter 8a, Utah Emergency Medical Services Act.

(2) [~~The purpose of this~~]This rule provides [~~guidelines for the equitable~~]distribution of Emergency Medical Services (EMS) per capita grant funds and competitive grant funds.[~~ specified under the Emergency Medical Services (EMS) Grants Program.~~]

R426-6-200. Per Capita Grants and Competitive Grants Eligibility.

[~~(1)~~]Per capita and competitive grant [~~Grants~~]funds are available [~~only~~]to a licensed [~~EMS~~]ground ambulance [~~services~~]provider, a licensed paramedic [~~services~~]non-transport provider, [~~EMS designated first response units~~]a designated quick response provider, [~~and~~]or a [~~EMS dispatch providers~~]designated emergency medical service dispatch center that is:[~~are either:~~]

[~~(a) Agencies or~~](1) a licensed or designated EMS provider owned by political subdivisions of local or state government;[~~ or incorporated non-profit entities; or~~]

(2) an incorporated non-profit entity; or

[~~(b)~~](3) a for-profit licensed or designated EMS provider[~~s~~] [~~that are~~]who is the primary EMS provider for a geographical service area.

[~~(2)~~]A for-profit licensed or designated EMS provider is a primary EMS provider [~~in a geographical service area if it is~~]if they are licensed or designated[~~for~~] and provide[~~s~~] a service at a higher level than the public or non-profit provider located in the same geographical service area.[;]

[~~(a) The levels of~~]EMS provider[~~s~~] levels[~~are in this~~] rank in the following order:

[~~(i)~~](1) Paramedic[~~ service~~];

[~~(ii)~~](2) Emergency medical technician intermediate advanced (EMT-IA);

[~~(iii)~~](3) Advanced emergency medical technician (AEMT);

[~~(iv)~~](4) Emergency medical technician (EMT);

[~~(v)~~](5) Emergency medical responder (EMR);

[~~(vi)~~](6) Emergency medical dispatcher (EMD).

[~~(b) Paramedic ambulance interfacility transports, EMT ambulance interfacility transports, or paramedic tactical rescue units are not eligible for grant funding because they cannot be the primary EMS provider for a geographical service area.~~]A licensed ground ambulance provider who is only licensed to provide inter-facility transport in a geographical service area, or is a licensed paramedical tactical provider are not eligible for per capita grant funds or competitive grant funds.

[~~(3) Grants~~]EMS per capita grants and competitive grants are available for use specifically related to the provision of emergency medical services and staff education. Grant funds cannot be used for rescue equipment [~~and~~]or fire equipment not directly used for patient medical care.

[~~(4) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.~~]A per capita grant or a competitive grant recipient shall be in compliance with Title 26 Chapter 8a, Utah Emergency Medical Services Act and Administrative Rules R426-2 through R426-9 before receiving grant funds.

[~~(5) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for per grant consideration.~~](4) A per capita grant or competitive grant recipient shall not be more than six months overdue in owed payments to the Department.

(5) A licensed ground ambulance provider that exceeded 10% profitability in the previous three fiscal reporting period is not eligible for EMS Grant funds.

R426-6-300. Per Capita Grants and Competitive Grants Implementation.

(1) [~~In accordance with Title 26, Chapter 8a,~~]A grant award[~~s~~] shall be implemented [~~by grants~~]through a contract between the Department and [~~the grantee~~]a grant recipient.

(2) [~~The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the Department and EMS Committee.~~]The Committee shall establish annual grant program guidelines. The Department shall use the current annual grant program guidelines to award grand funds paid to recipients.

(3) The Department may [~~accept only complete~~]reject a grant application[~~s which are submitted by the deadlines established by the Department and EMS Committee.~~] that does not adhere to current annual grant program guidelines.

(4) [~~Grant awards are effective on July 31 and must be used by May 15 of the following year. No extensions will be given.~~]Grant funds may be used during the terms indicated in an award contract.

(5) Grant funds are[~~funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.~~] paid by the Department's terms in the contract with grant recipients.

(6) [~~No matching funds are required for per capita grants.~~]Grant funds do not require matching recipient funds.

[~~(7) Per capita funds may be used as matching funds for competitive grants.~~]

(8) A p[~~P~~]er capita grant award shall be no less than $500.

R426-6-400. Per Capita Application and Award Formula.

[~~(1) Per capita grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.~~]

[~~(2) Agency~~](1) A per capita grant applicant[~~s~~] shall [~~certify~~]attest to the accuracy of their [~~agency~~]licensed or designated EMS provider's personnel roster[~~s as part of the grant application process~~] on December 31 of the year before the grant award.

(a) A licensed or certified EMS individual who works for both a public and a for-profit agency may be credited only to the public or non-profit [~~licensee or designee~~]licensed or designated EMS provider.

(b) A licensed[~~Certified~~] EMS individual[~~s~~] who is employed by two or more licensed or designated EMS providers may be [~~credited for only one agency~~]included on a percentage basis for grant award calculations. However, if [~~a dispatcher~~]a certified EMD is also an EMT, EMT-I, AEMT, EMT-IA, or paramedic, the [~~dispatcher~~]certified EMD may be credited to one [~~agency~~]licensed or designated EMS provider as [~~a dispatcher~~]a certified EMD, and to a[~~one agency~~] licensed or designated EMS provider as an EMT, EMT-I, AEMT, EMT-IA, or paramedic.

[~~(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.~~]

[~~(3)~~](2) The Department shall allocate funds by using the following point totals for [~~agency certified~~]licensed or certified personnel: certified [~~Dispatchers~~]EMDs = 1; [~~certified~~]licensed EMRs = 1; [~~certified~~]licensed EMTs = 2; [~~certified~~]licensed Advanced EMTs = 3; [~~certified~~]licensed Intermediate Advanced EMTs = 3; and [~~certified~~]licensed Paramedics = 4. The number of certified or licensed personnel is based upon the personnel rosters of each licensed EMS provider, designated EMS dispatch agency, and designated EMS [~~first response unit~~]quick response provider on December 31 of the preceding fiscal year. [~~as a date as specified by the Department immediately prior to the grant year, which begins July 1. To comply with Legislative intent, the p~~]Point totals of each eligible [~~agency~~]licensed or designated EMS provider will be multiplied by the current county classification[~~ as provided under Section 17-50-501~~].

R426-6-500. Competitive Grant Process.

[~~(1) It is the intent of the EMS Committee that there the local EMS council or committee review of EMS grant applications. Therefore, copies of competitive grant applications should be provided by grant applicants to their respective county EMS councils~~

~~or committees and the multi-county EMS councils or committees, where organized, for review and recommendation to the State Grants subcommittee.~~

~~(2) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.~~

~~(3) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.~~

~~(4) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.~~

~~(5) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS issues.~~

~~(6) The Grants Subcommittee shall make recommendations based upon the following criteria:~~

~~(a) The impact on patient care;~~

~~(b) a description of the size and significant impediments of the geographic service area;~~

~~(c) the population demographics of the service area;~~

~~(d) the urgency of the need;~~

~~(e) call volume;~~

~~(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;~~

~~(g) local county recommendation;~~

~~(h) a description of the agency; and~~

~~(i) percent of responses to non-residents of the service area.~~]

(1) Competitive EMS Grants are available to a licensed EMS provider in a county between the third and sixth class. Grant funds will be allocated and approved by the Committee. Grant award prioritization shall use a standardized application with questions to assess comparative need for a licensed EMS provider;

(2) the Rural EMS Directors' Association of Utah may provide content for application questions and recommend priorities for grant awards;

(3) the Grants Subcommittee may review suggested competitive grant awards and make recommendations to the Committee for final approval.

R426-6-600. [~~Interim or~~]Emergency Grant Awards.

(1) The Grants Subcommittee may recommend interim or emergency grants if [~~all~~]the following are met:

(a) [~~G~~]grant funds are available;

(b) [~~T~~]the applicant clearly demonstrates [~~the~~]need;

(c) the application was not rejected by the Grants Subcommittee during the current grant cycle; and

(d) [~~D~~]delay of funding to the next scheduled grant cycle would impair the [~~agency's~~]licensed or designated EMS provider's ability to provide [~~EMS~~]care.

(2) Applicants for [~~interim or~~]emergency grants shall:

(a) [~~S~~]submit an [~~interim/~~]emergency grant application, following the same format as annual grant applications; and

(b) submit the [~~interim/~~]emergency grant application to the Department at least 30 days [~~prior to~~]before the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Subcommittee shall review the [~~interim/~~]emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
Date of Last Change: 2022[~~November 19, 2015~~]
Notice of Continuation: March 28, 2018
Authorizing, and Implemented or Interpreted Law: 26-8a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R501-2**	**Filing ID 54731**

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration, Administrative Services, Licensing	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R501-2. Core Rules
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
Due to the Governor's Executive Order (EO No. 2021-12), the Office of Licensing consolidated all duplicative rules into one general category in R501-1, General Provisions for Licensing. All relevant portions of this rule was moved and the outdated/over-burdensome components are discarded. This rule is no longer needed.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**
Repeals an outdated and unnecessary rule for compliance with the Governor's Executive order. This rule is repealed in its entirety.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

No aggregate anticipated cost or savings would result in the repeal of this rule. The repeal of this rule has been accounted for in the previous amendments to Rule R501-1.

B) Local governments:

No aggregate anticipated cost or savings would result in the repeal of this rule. The repeal of this rule has been accounted for in the previous amendments to Rule R501-1.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

No aggregate anticipated cost or savings would result in the repeal of this rule. The repeal of this rule has been accounted for in the previous amendments to Rule R501-1.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

No aggregate anticipated cost or savings would result in the repeal of this rule. The repeal of this rule has been accounted for in the previous amendments to Rule R501-1.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

No aggregate anticipated cost or savings would result in the repeal of this rule. The repeal of this rule has been accounted for in the previous amendments to Rule R501-1.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

No aggregate anticipated cost would result in the repeal of this rule. The repeal of this rule has been accounted for in the previous amendments to Rule R501-1.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 62A-2-106

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/08/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	**Date:**	06/30/2022

R501. Human Services, Administration, Administrative Services, Licensing.

[~~R501-2. Core Rules.~~

~~R501-2-1. Definition.~~

~~Core Rules are required for Human Service Programs, listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:~~

~~A. the administration and maintenance of client and service records;~~

~~B. staff qualifications; and~~

~~C. staff to client ratios.~~

~~R501-2-2. Program Administration.~~

~~A. The program shall have a written statement of purpose to include the following:~~

~~1. program philosophy,~~

~~2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,~~

~~3. description of the services provided,~~

~~4. the population to be served,~~

~~5. fee policy,~~

~~6. participation of consumers in activities unrelated to treatment plans, and~~

~~7. program policies and procedures which shall be submitted prior to issuance of an initial licensing.~~

~~B. Copies of the above statements shall be available at all times to the Office of Licensing upon request. General program information shall be available to the public.~~

~~C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.~~

~~D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:~~

~~1. program management,~~

~~2. maintenance of complete, accurate and accessible records, and~~

~~3. record retention.~~

~~E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.~~

~~F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.~~

~~G. All programs which serve minors or vulnerable adults shall submit identifying information for background screening of all adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18.~~

~~H. The program shall comply with all applicable National Interstate Compact Laws.~~

~~I. A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.~~

~~J. The program's license shall be posted where it is easily read by consumers, staff and visitors. See also R501-1-5-F. The program shall post Civil Rights License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.~~

~~K. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.~~

~~L. Programs providing foster or proctor care services shall adhere to the following:~~

~~1. approve homes that comply with Foster Care Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.~~

~~2. foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and training plan.~~

~~3. the agency must have a procedure to revoke or deny home approval.~~

~~4. the agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.~~

~~5. planning, with participation of the child's legal guardian for care and services to meet the child's individual needs.~~

~~6. obtaining, coordinating and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.~~

~~7. providing ongoing supervision of foster parents to ensure the quality of the care they provide.~~

~~R501-2-3. Governance.~~

~~A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. The governing body's responsibilities shall include the following:~~

~~1. to ensure program policy and procedures compliance,~~

~~2. to ensure continual compliance with relevant local, state and federal requirements,~~

~~3. to notify the Office of Licensing within 30 days of changes in program administration and purpose,~~

~~4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",~~

~~5. to ensure that the program has adequate staffing as identified on the organizational chart,~~

~~6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and~~

~~7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews it's license to complete the necessary student forms including youth education forms.~~

~~B. The governing body shall be one of the following:~~

~~1. a Board of Directors in a non-profit organization; or~~

~~2. commissioners or appointed officials of a governmental unit; or~~

~~3. Board of Directors or individual owner or owners of a for-profit organization.~~

~~C. The program shall have a list of members of the governing body, indicating name, address and term of membership.~~

~~D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.~~

~~E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of Licensing, to include the following:~~

~~1. attendance,~~

~~2. date,~~

~~3. agenda items, and~~

~~4. actions.~~

~~R501-2-4. Statutory Authority.~~

~~A. A publicly operated program shall document the statutory basis for existence.~~

~~B. A privately operated program shall document its ownership and incorporation.~~

~~R501-2-5. Record Keeping.~~

~~The program shall have, a written record for each consumer to include the following:~~

~~A. Demographic information to include Medicaid number as required,~~

~~B. Biographical information,~~

~~C. Pertinent background information, including the following;~~

~~1. personal history, including social, emotional, psychological and physical development,~~

~~2. legal status,~~

~~3. emergency contact with name, address and telephone number, and~~

~~4. photo as needed.~~

~~D. Health records of a consumer including the following:~~

~~1. immunizations, for children only,~~

~~2. medication,~~

~~3. physical examinations, dental, and visual examinations, and~~

~~4. other pertinent health records and information.~~

~~E. Signed consent forms for treatment and signed Release of Information form,~~

~~F. Copy of consumer's individual treatment or service plan,~~

~~G. A summary of family visits and contacts, and~~

~~H. A summary of attendance and absences.~~

~~R501-2-6. Direct Service Management.~~

~~A. Direct service management, as described herein, is not applicable to social detoxification. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:~~

~~1. legal status,~~

~~2. age and sex of consumer,~~

~~3. consumer needs or problems best addressed by program,~~

~~4. program limitations, and~~

~~5. appropriate placement.~~

~~B. The program shall have a written admission policy and procedure to include the following:~~

~~1. appropriate intake process,~~

~~2. age groupings as approved by the Office of Licensing,~~

~~3. pre-placement requirements,~~

~~4. self-admission,~~

~~5. notification of legally responsible person, and~~

~~6. reason for refusal of admission, to include a written, signed statement.~~

~~C. Intake evaluation.~~

~~1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.~~

~~2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.~~

~~3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.~~

~~D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:~~

~~1. rules of program,~~

~~2. consumer and family expectations,~~

~~3. services to be provided and cost of service,~~

~~4. authorization to serve and to obtain emergency care for consumer,~~

~~5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and~~

~~6. sanctions and consequences.~~

~~E. Consumer treatment plan shall be individualized, as applicable according to the following.~~

~~1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.~~

~~2. The plan shall include the following:~~

~~a. findings of intake evaluation and assessment,~~

~~b. measurable long and short term goals and objectives,~~

~~1) goals or objectives clearly derived from assessment information,~~

~~2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,~~

~~3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and~~

~~4) evidence of family involvement in treatment plan, unless clinically contraindicated,~~

~~c. specification of daily activities, services, and treatment, and~~

~~d. methods for evaluation,~~

~~3. Treatment plans~~

~~a. plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.~~

~~4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.~~

~~5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.~~

~~6. Treatment record entries shall include the following:~~

~~a. identification of program,~~

~~b. date and duration of services provided,~~

~~c. description of service provided,~~

~~d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and~~

~~e. documentation of review of consumer's record to include the following:~~

~~1) signature,~~

~~2) title,~~

~~3) date, and~~

~~4) reason for review.~~

~~7. Transfer and Discharge~~

~~a. a discharge plan shall identify resources available to consumer.~~

~~b. the plan shall be written so it can be understood by the consumer or legally responsible party.~~

~~c. whenever possible the plan shall be developed with consumers participation, or legally responsible party if necessary. The plan shall include the following:~~

~~1) reason for discharge or transfer,~~

~~2) adequate discharge plan, including aftercare planning,~~

~~3) summary of services provided,~~

~~4) evaluation of achievement of treatment goals or objectives,~~

~~5) signature and title of staff preparing summary, and~~

~~6) date of discharge or transfer.~~

~~d. The program shall have a written policy concerning unplanned discharge.~~

~~8. Incident or Crisis Intervention records~~

~~a. The program shall have written policies and procedures which includes: reporting to program manager, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches and other situations or circumstances affecting the health, safety, or well-being of consumers.~~

~~b. records shall include the following:~~

~~1) summary information,~~

~~2) date, time of emergency intervention,~~

~~3) action taken,~~

~~4) employees and management responsible and involved,~~

~~5) follow up information,~~

~~6) list of referrals,~~

~~7) signature and title of staff preparing report, and~~

~~8) records shall be signed by management staff.~~

~~c. the report shall be maintained in individual consumer records.~~

~~d. when an incident involves abuse, neglect, serious illness, violations of the Provider Code of Conduct or death of a consumer, a program shall:~~

~~1) notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.~~

~~2) a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.~~

~~R501-2-7. Behavior Management.~~

~~A. The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:~~

~~1. definition of appropriate and inappropriate behaviors of consumers,~~

~~2. acceptable staff responses to inappropriate behaviors, and~~

~~3. consequences.~~

~~B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually.~~

~~C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.~~

~~D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.~~

~~E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.~~

~~F. Programs using time-out or seclusion methods shall comply with the following:~~

~~1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:~~

~~a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.~~

~~b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time-out or seclusion.~~

~~c. If a child is placed in time-out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.~~

~~d. Any one time-out or seclusion shall not exceed 4 hours in duration.~~

~~e. Staff is required to maintain a visual contact with a child in time-out or seclusion at all times.~~

~~f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time-out or seclusion shall follow the safety plan.~~

~~g. A child placed in time-out or seclusion shall not be in possession of belts, matches, weapons, or any other potentially harmful objects or materials that could present a risk or harm to the child.~~

~~2. Time-out or seclusion areas shall comply with the following:~~

~~a. Time-out or seclusion rooms shall not have locking capability.~~

~~b. Time-out or seclusion rooms shall not be located in closets, bathrooms, or unfurnished basements, attic's or locked boxes.~~

~~c. A time-out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time-out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.~~

~~d. All time-out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time-out or seclusion shall be inspected and approved by the local fire department~~

~~G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.~~

~~R501-2-8. Rights of Consumers.~~

~~A. The program shall have a written policy for consumer rights to include the following:~~

~~1. privacy of information and privacy for both current and closed records,~~

~~2. reasons for involuntary termination and criteria for re-admission to the program,~~

~~3. freedom from potential harm or acts of violence to consumer or others,~~

~~4. consumer responsibilities, including household tasks, privileges, and rules of conduct,~~

~~5. service fees and other costs,~~

~~6. grievance and complaint procedures,~~

~~7. freedom from discrimination,~~

~~8. the right to be treated with dignity,~~

~~9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional,~~

~~10. a list of people, whose visitation rights have been restricted through the courts,~~

~~11. the right to send and receive mail providing that security and general health and safety requirements are met,~~

~~12. defined smoking policy in accordance with the Utah Clean Air Act, and~~

~~13. statement of maximum sanctions and consequences, reviewed and approved by the Office of Licensing.~~

~~B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.~~

~~R501-2-9. Personnel Administration.~~

~~A. The program shall have written personnel policies and procedures to include the following:~~

~~1. employee grievances,~~

~~2. lines of authority,~~

~~3. orientation and on-going training,~~

~~4. performance appraisals,~~

~~5. rules of conduct, and~~

~~6. sexual and personal harassment.~~

~~B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or designated management person shall be available at all times during operation of program.~~

~~C. The program shall have a personnel file for each employee to include the following:~~

~~1. application for employment,~~

~~2. applicable credentials and certifications,~~

~~3. initial medical history if directed by the governing body,~~

~~4. tuberculin test if directed by the governing body,~~

~~5. food handler permit, where required by local health authority,~~

~~6. training record,~~

~~7. annual performance evaluations,~~

~~8. I-9 Form completed as applicable,~~

~~9. comply with the provisions of R501-14 and R501-18 for background screening, and~~

~~10. a signed copy of the current Department of Human Services Provider Code of Conduct.~~

~~D. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.~~

~~E. The program shall employ or contract with trained or qualified staff to perform the following functions:~~

~~1. administrative,~~

~~2. fiscal,~~

~~3. clerical,~~

~~4. housekeeping, maintenance, and food service,~~

~~5. direct consumer service, and~~

~~6. supervisory.~~

~~F. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.~~

~~G. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.~~

~~H. The governing body shall ensure that all staff are certified and licensed as legally required.~~

~~I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.~~

~~J. The program shall provide interpreters for consumers or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.~~

~~K. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.~~

~~L. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:~~

~~1. direct supervision by a program staff,~~

~~2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,~~

~~3. background screening,~~

~~4. a record maintained with demographic information, and~~

~~5. signed copy of the current Department of Human Services Provider Code of Conduct.~~

~~M. Staff Training~~

~~1. Staff members shall be trained in all policies of the program, including the following:~~
~~a. orientation in philosophy, objectives, and services,~~
~~b. emergency procedures,~~
~~c. behavior management,~~
~~d. current program policy and procedures, and~~
~~e. other relevant subjects.~~
~~2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross.~~
~~3. Staff shall have current food handlers permit as required by local health authority.~~
~~4. Training shall be documented and maintained on-site.~~

~~R501-2-10. Infectious Disease.~~
~~The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.~~

~~R501-2-11. Emergency Plans.~~
~~A. The program shall have a written plan of action for disaster and casualties to include the following:~~
~~1. designation of authority and staff assignments,~~
~~2. plan for evacuation,~~
~~3. transportation and relocation of consumers when necessary, and~~
~~4. supervision of consumers after evacuation or relocation.~~
~~B. The program shall educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.~~
~~C. The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.~~

~~R501-2-12. Safety.~~
~~A. Fire drills in non-outpatient programs, shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.~~
~~B. The program shall provide access to an operable 24-hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.~~
~~C. The program shall have an adequately supplied first aid kit in the facility such as recommended by American Red Cross.~~
~~D. All persons associated with the program who have access to children or vulnerable adults and who also have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.~~

~~R501-2-13. Transportation.~~
~~A. The program shall have written policy and procedures for transporting consumers.~~
~~B. In each program or staff vehicle, used to transport consumers, there shall be emergency information which includes at a minimum, the name, address and phone number of the program and an emergency telephone number.~~
~~C. The program shall have means, or make arrangement for, transportation in case of emergency.~~
~~D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.~~
~~E. Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by American Red Cross.~~

~~R501-2-14. Categorical Rules.~~
~~In addition to Core Rules, Categorical Rules are specific regulations which must be met for the following:~~
~~A. Child Placing Adoption Agencies R501-7,~~
~~B. Day Treatment R501-20,~~
~~C. Intermediate Secure Treatment Programs for Minors R501-16,~~
~~D. Outdoor Youth Programs R501-8,~~
~~E. Outpatient Treatment R501-21,~~
~~F. Foster Care R501-12,~~
~~G. Residential Treatment R501-19,~~
~~H. Residential Support R501-22,~~
~~I. Social Detoxification R501-11 and~~
~~J. Assisted Living for DSPD Residential R710.~~

~~R501-2-15. Single Service Program Rules.~~
~~Core Rules of the Office of Licensing do not apply to single service programs.~~
~~Single services program Rules are the regulations which must be met for the following:~~
~~A. Adult Day Care, which Rules are found in R501-13,~~
~~B. Adult Foster Care, which Rules are found in R501-17.~~

~~KEY: licensing, human services~~
~~Date of Last Change: March 17, 2004~~
~~Notice of Continuation: October 4, 2017~~
~~Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-131**	**Filing ID 54701**

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901

Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R590-131. Accident and Health Coordination of Benefits Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The majority of the changes are being done to fix style issues to bring the rule text more in line with the Utah Rulewriting Manual. Other changes make the language of this rule more clear, and remove the current Sections R590-131-10 and R590-131-11. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-22-619	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/21/2022

R590. Insurance, Administration.
R590-131. Accident and Health Coordination of Benefits Rule.
R590-131-1. Authority.

This rule is [~~adopted and~~]promulgated by the commissioner pursuant to [~~Subsection 31A-2-201(3)(a) and Section~~]Sections 31A-2-201 and 31A-22-619.

R590-131-2. Purpose and [~~Applicability~~]Scope.

(1) The purpose of this rule is to:

(a) establish [~~a uniform~~]an order [~~of benefit determination under which a plan pays~~]for an insurer to pay a coordination of benefits claim;

(b) [~~reduce duplication of benefits by permitting a reduction of the benefits to be paid by a plan when the plan, pursuant to this rule, does not have to pay its benefits first~~]establish when benefits may be reduced under a secondary plan; and

(c) provide [~~greater~~]efficiency in [~~the~~]processing [~~of~~]a claim when [~~a person~~]an enrollee is covered under more than one plan.

(2) This rule applies to [~~any~~]an insurer offering accident and health insurance[~~ plan issued on or after the effective date of this rule~~].

R590-131-3. Definitions.

[~~For the purposes of this rule, the commissioner adopts the definitions in Section 31A-1-301, and the following~~]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Allowable [~~E~~]expense" means a[~~ny~~] health care expense, including coinsurance or a copayment[~~s and~~] without reduction for any applicable deductible, that is covered in full or in part by any [~~of the plans~~]plan covering [~~the person~~]an enrollee.

(a) If an enrollee advises an insurer [~~is advised by a covered person~~]that each plan covering the [~~person~~]enrollee is a high-deductible health plan and the [~~person~~]enrollee intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, then the primary high-deductible health plan's deductible is not an allowable expense, except for a[~~ny~~] health care expense incurred that [~~may not be~~]is not subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986.

(b) An expense or a portion of an expense that is not covered by any [~~of the plans~~]plan is not an allowable expense.

(c) Any expense that a provider, by law or in accordance with a contractual agreement, is prohibited from charging [~~a covered person~~]an enrollee is not an allowable expense.

(d) The [~~following are~~]examples [~~of expenses that~~]in this subsection (1)(d) are not an allowable expense[~~s:~~].

(i) If [~~a person~~]an enrollee is confined in a private hospital room, the difference between the cost of a semi-private room [~~in the hospital~~]and the private room is not an allowable expense, unless one of the plans provides coverage for a private hospital room expense[~~s~~].

(ii) If [~~a person~~]an enrollee is covered by two or more plans that compute their benefit [~~payments~~]on the basis of a usual and customary fee[~~s or~~], a relative value schedule[~~ reimbursement~~], or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(iii) If [~~a person~~]an enrollee is covered by two or more plans that provide [~~benefits or services~~]a benefit or service on the basis of a negotiated fee[~~s~~], any amount in excess of the highest [~~of the~~]negotiated fee[~~s~~] is not an allowable expense.

(iv) If [~~a person~~]an enrollee is covered by one plan that calculates its [~~benefits or services~~]benefit or service on the basis of a usual and customary fee[~~s~~], a relative value schedule[~~ reimbursement~~], or other similar reimbursement methodology and another plan that provides its [~~benefits or services~~]benefit or service on the basis of a negotiated fee[~~s~~], then the primary plan's payment arrangement shall be the allowable expense for each [~~of the plans. However, if the~~]plan.

(v) If a provider has [~~contracted~~]a contract with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement, and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

(e) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drugs, or hearing aids.

(i) A plan that limits the application of COB to certain coverages or benefits may limit the definition of "allowable expense" in its contract to expenses that are similar to the expenses that it provides.

(ii) When COB is restricted to specific coverages or benefits in a contract, the definition of "allowable expense" shall include similar expenses to which COB applies.

(f) When a plan provides benefits in the form of [~~services~~]a service, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

(g) The amount of [~~the~~]a reduction may be excluded from allowable expense when [~~a covered person's~~]an enrollee's benefits are reduced under a primary plan because the [~~covered person~~]enrollee does not comply with the plan provisions concerning a second surgical opinion or pre-certification of [~~admissions or services~~]an admission or a service.

(2)(a) "Birthday" [~~refers only to~~]means the month and day [~~in a calendar year and does not include the year in which the person~~]the enrollee was born.

(b) "Birthday" does not include the year the enrollee was born.

(3) "Child" means a:

(a) child as defined in Section 78B-12-102; or

(b) dependent child [~~that~~]who is provided coverage pursuant to Sections 31A-22-610, 31A-22-610.5, and 31A-22-611.

(4)(a) "Claim" means a request that a plan's benefits [~~of a plan~~]be provided or paid.[~~ The benefits claimed~~]

(b) A benefit claimed may be in the form of:

[~~(a)~~](i) a service[~~s~~], including [~~supplies~~]a supply;

[~~(b)~~](ii) payment for all or a portion of the expenses incurred;

[~~(c)~~](iii) a combination of Subsections [~~R590-131-3(4)(a) and R590-131-3(4)(b)~~](4)(b)(i) and (4)(b)(ii); or

[~~(d)~~](iv) an indemnification.

(5) "Closed [~~Panel Plan~~]panel plan" means a plan that:

(a) provides [~~health~~]benefits to [~~covered persons~~]an enrollee primarily in the form of services through a panel of providers that have contracted with or are employed by [~~a plan, and that~~]an insurer; and

(b) excludes [~~benefits for services~~]a benefit for a service provided by [~~other~~]a non-panel provider[~~s~~], except in the case[~~s~~] of:

(i) an emergency; or

(ii) a referral by a panel [~~member~~]provider.

(6)(a) "Conforming [~~P~~]plan" or "Plan" means a plan [~~that is subject to this rule~~]that allows COB.

(b) "Conforming plan" or "Plan" includes:

(i) an individual, group, or group-type accident and health insurance contract, including a closed panel plan;

(ii) a group or group-type uninsured arrangement;

(iii) a medical care benefit in a long-term care contract that provides reimbursement for an incurred expense, rather than an indemnity benefit; and

(iv) a Medicare or other governmental benefit, as permitted by law.

(7) [~~"Continuation Coverage" means coverage provided under right of continuation pursuant to the federal (COBRA) law, Utah mini-COBRA, or a state extension law. For the purposes of this rule, a person's eligibility status will maintain the same classification under continuation coverage~~]"Continuation coverage" or "COBRA" means coverage provided under the Consolidated Omnibus Budget Reconciliation Act of 195, Section 31A-22-722, or another state extension required by law.

(8) "Coordinated package" means multiple plans or separate parts of a plan that are intended to be part of a coordinated plan of benefits.

(9) "Coordination of [~~B~~]benefits" or "COB" means a plan provision [~~establishing~~]that establishes an order in which a plan[~~s pay their~~] pays a coordination of benefit claim[~~s~~], and [~~permitting secondary plans~~]a plan, other than a primary plan, to reduce [~~their~~]the plan benefits so that the combined benefit[~~s~~] of [~~each plan does~~]all plans do not exceed the total allowable expense[~~s~~].

[~~(9)~~](10) "Custodial [~~P~~]parent" means:

(a) the [~~legal custodial parent or physical custodial parent as~~]parent awarded custody of a child by a court [~~decree~~]order; or

(b) in the absence of a court [~~decree~~]order, the parent with whom the child resides more than one[~~-~~]-half of the calendar year without regard to any temporary visitation.

[~~(10)~~](11)(a) "Group-type contract" means a contract that:

(i) is not available to the general public; and

(ii) is obtained and maintained only because of membership in, or a connection with, a particular organization or group, including blanket coverage.

(b) "Group-type contract" does not [~~include~~]mean an individually underwritten [~~and issued~~]guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings [~~to the insured since the insured would have~~]and the enrollee has the right to maintain or renew the policy independently of continued employment with the employer.

[~~(11) "High-deductible Health Plan" has the meaning given the term under Section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003~~](12) "High-deductible health plan" means a high-deductible plan as defined in Section 223, Internal Revenue Code.

[~~(12) "Hospital Indemnity Benefits" means benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim~~](13)(a) "Hospital indemnity benefit" or "fixed indemnity benefit" means a benefit that is not related to actual incurred expenses.

(b) "Hospital indemnity benefit" or "fixed indemnity benefit" does not include a reimbursement-type benefit designed or administered to give the enrollee the right to elect an indemnity-type benefit at the time of a claim.

[~~(13)~~](14)(a) "Non-conforming [~~P~~]plan" means a plan [~~that is not subject to this rule~~]that may not coordinate benefits.

(b) "Non-conforming plan" includes:

(i) hospital indemnity benefits or fixed indemnity benefits;

(ii) accident-only coverage;

(iii) specified disease or specified accident coverage;

(iv) limited benefit health coverage described in Section R590-126-7;

(v) school accident coverage that covers a student for accidents only, including athletic injuries, either on a 24-hour basis or on a to-and-from-school basis;

(vi) benefits provided in a long-term care contract for a non-medical service, including:

(A) personal care, adult day care, homemaker services, assistance with activities of daily living, respite care, and custodial care; and

(B) a contract that pays a fixed daily benefit without regard to an expense incurred or the receipt of a service;

(vii) a Medicare supplement contract;

(viii) a state plan under Medicaid; and

(ix) a governmental plan that, by law, provides benefits that are in excess to any private insurance plan or other non-governmental plan.

[~~(14) "Plan" means a form of coverage with which coordination is allowed.~~

~~(a) Separate parts of a plan that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.~~

~~(b) If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract.~~

~~(c) Whether a plan's contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan."~~

~~(d) Plan shall include:~~

~~(i) individual and group accident and health insurance contracts and subscriber contracts except as provided by Subsection R590-131-3(14)(e);~~

~~(ii) uninsured arrangements of group or group-type coverage;~~

~~(iii) coverage through closed panel plans;~~

~~(iv) group-type contracts;~~

~~(v) medical care components of long-term care contracts, such as skilled nursing care; and~~

~~(vi) Medicare or other governmental benefits, as permitted by law.~~

~~(e) Plan may not include:~~

~~(i) hospital indemnity coverage benefits or other fixed indemnity coverage;~~

~~(ii) accident only coverage;~~

~~(iii) specified disease or specified accident coverage;~~

~~(iv) limited benefit health coverage, as defined in Rule R590-126;~~

~~(v) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis;~~

~~(vi) benefits provided in long-term care insurance policies for non-medical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;~~

~~(vii) Medicare supplement policies;~~

~~(viii) a state plan under Medicaid; or~~

~~(ix) a governmental plan that, by law, provides benefits that are in excess of those of any private insurance plan or other non-governmental plan.~~

~~(15) "Policyholder" means the primary insured named in a non-group insurance policy.~~]

[~~(16)~~](15)(a) "Primary [~~P~~]plan" means a plan whose benefits for [~~a person's~~]an enrollee's health care coverage must be determined without [~~taking the existence of~~]considering any other plan[~~ into consideration~~].

(b) A plan is a primary plan if:

[~~(a) the plan~~](i) a plan either:

(A) has no order of benefit determination; or

[~~(b) its rules~~](B) has a benefit determination provision that differs from [~~those permitted by~~]the provisions in this rule; or

[~~(c) each plan that covers the person use the~~](ii) a plan uses this rule's order of benefit determination [~~provisions in Section R590-131-6~~]and under [~~those requirements~~]Section R590-131-6 the plan determines its benefits first.

[~~(17)~~](16) "Retiree employee benefit plan" means an employee benefit plan as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

[~~(18)~~](17) "Secondary [~~P~~]plan" means a[~~ny~~] plan that is not a primary plan[~~.~~

~~(19) "Separated" means married persons who are legally separated~~].

R590-131-4. [~~COB~~]Coordination of Benefits Contract Provisions.

(1) A COB provision may not be used that permits a plan to reduce [~~its~~]the plan benefits on the basis that an enrollee is eligible to enroll in another plan and the enrollee did not enroll in that plan[~~:~~

~~(a) another plan exists and the covered person did not enroll in that plan;~~

~~(b) a person is or could have been covered under another plan, except with respect to a retiree employee benefit plan; or~~

~~(c) a person has elected an option under another plan providing a lower level of benefits than another option that could have been elected~~].

(2)(a) Under the terms of a closed panel plan, benefits are not payable if the [~~covered person~~]enrollee does not use the services of a closed panel plan's providers[~~ for either plan~~].

[~~(a)(i)~~](b) In most instances, COB does not occur if [~~a covered person~~]an enrollee is enrolled in two or more closed panel plans and obtains services from a provider in only one of the closed panel plans because the other closed panel plan, the one whose providers were not used, has no liability[~~.~~

~~(ii) The closed panel plan whose providers were not used has no liability~~].

[~~(b)(i) COB~~](c)(i) COB may occur [~~during the plan year when the covered person~~]when an enrollee receives [~~services from a provider who is on each closed panel, or~~]emergency services that [~~would have been~~]are covered by both plans.

(ii) The secondary plan shall use [~~the provisions of~~]Section R590-131-7 to determine the amount it [~~should~~]shall pay for the benefit.

(3) [~~No plan may~~]A plan may not use a COB [~~provision or any~~]or other provision that [~~allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of a plan under Section R590-131-3~~]reduces the plan's benefits for non-conforming benefits.

(4) A coordinated package is one plan and there is no COB among the multiple plans or separate parts of a plan.

(5) If a plan coordinates benefits, the plan shall state the type of coverage that will be considered in applying the COB provision.

(6) Whether a plan uses the term "plan" or some other term such as "program," the definition may not be broader than the definition of "plan."

R590-131-5. Rules for Coordination of Benefits.

When [~~a person~~]an enrollee is covered by [~~two or more plans~~]more than one plan, the rules for determining the order of benefit payments are as follows:

(1) The primary plan shall pay or provide [~~its~~]benefits as if [~~the~~]a secondary plan[~~s or plan did~~] does not exist.

(2) If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as [~~if it were~~]the primary plan[~~ when a covered person uses a non-panel provider~~], except for an emergency service[~~s~~] or an authorized referral[~~s that are paid or provided~~] that is paid by the primary plan.

(3) [~~When multiple contracts providing coordinated coverage are treated as a single plan under this rule, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts.~~

~~(4) If more than one insurer pays or provides benefits under the plan, the insurer designated as primary within the plan shall be responsible for the plan's compliance with this rule.~~

~~(5) If a person~~]If an enrollee is covered by more than one secondary plan, the order of benefits [~~are~~]is determined using [~~the rules in~~]Section R590-131-6[~~, and each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this rule, has its benefits determined before those of the secondary plan~~].

[~~(6)(a)~~](4)(a) Except as provided in Subsection [~~R590-131-5(6)(b)~~](4)(b), a plan that does not contain [~~order of benefit determination provisions that are~~]a COB provision consistent with this [~~regulation is always~~]rule is the primary plan unless [~~the provisions of~~]both plans[~~, regardless of the provisions of this subsection,~~] state that the [~~complying~~]conforming plan is primary.

(b) [~~Coverage~~]Supplemental coverage that is obtained [~~by virtue of~~]through membership in a group [~~and designed to supplement a part of~~]may be excess to a plan with a basic package of benefits[~~ may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are~~].

(i) Supplemental coverage includes:

(A) major medical coverage[~~s that are~~] that is superimposed over a base plan providing hospital and surgical expense benefits[~~,~~]; and

(B) insurance type coverage[~~s that are~~] that is written in connection with a closed panel plan to provide out-of-network benefits.

(ii) Supplemental coverage does not include a non-conforming plan.

[~~(7) A plan may take into consideration the~~](5) Consideration of benefits paid or provided by another plan [~~only when, under this rule, it~~]may only occur when the plan is secondary to [~~that~~]the other plan.

R590-131-6. Determining Order of Benefits.

[~~Each plan shall determine its~~]The order of benefits for each plan is determined using the first [~~of the following rules that apply:~~]rule that applies in this section.

(1) Non-dependent or Dependent Rule.

The plan [~~that covers the person other than as a~~]covering an enrollee as a non-dependent, such as an employee, member, policyholder, or retiree[~~ or subscriber~~], is the primary plan and the plan [~~that covers the person~~]covering the enrollee as a dependent is the secondary plan.

(2) Child Covered Under More Than One Plan Rule.

[~~Unless there is a court decree stating otherwise, a plan covering a child shall determine the order of benefits as follows:~~]A plan covering a child shall determine the order of benefits as follows, unless there is a court order stating otherwise.

(a) For a child whose parents are married or whose parents are living together if they have never been married:

(i) [~~The~~]the plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(ii) [~~If~~]if both parents have the same birthday, the plan that has covered the parent the longest is the primary plan.

(b) For a child whose parents are divorced[~~ or~~], legally separated, or are not living together if they have never been married:

(i)(A) [~~If a court decree~~]if a court order states that one of the parents is responsible for the child's health care expenses or health care coverage, the responsible parent's plan is the primary[~~.~~] plan; or

(B) [~~If the parent with responsibility has no~~]if the parent responsible for the child's health care expenses or health care coverage does not have health care coverage for the child[~~'s health care expenses~~], but the responsible parent's spouse [~~of the responsible parent does have~~]has health care coverage for the child[~~'s health care expenses~~], the responsible parent's spouse's plan is the primary plan[~~.~~];

(ii) [~~If a court decree~~]if a court order states that both parents are responsible for the child's health care expenses or health care coverage, [~~the provisions of Subsection R590-131-6(2)(a) shall determine the order of benefits.~~]Subsection (2)(a) applies;

(iii) [~~If a court decree~~]if a court order states that the parents have joint custody without stating that one parent has responsibility for the health care expenses or health care coverage of the child, [~~the provisions of Subsection R590-131-6(2)(a) shall determine the order of benefits.~~]Subsection (2)(a) applies; and

(iv) [~~If there is no court decree allocating~~]if no court order allocates responsibility for the child's health care expenses or health care coverage, the order of benefits for the child [~~are as follows~~]is:

(A) the plan covering the custodial parent;

(B) the plan covering the custodial parent's spouse;

(C) the plan covering the non-custodial parent; and then

(D) the plan covering the non-custodial parent's spouse.

[~~(v) For a child covered under more than one plan, and one or more of the plans~~](c) If a plan provides coverage for a child through an individual[~~s who are not the parents~~] who is not a parent of the child, [~~such as a guardian,~~]the order of benefits [~~shall be~~]is determined under [~~Subsection R590-131-6(2)(a) or R590-131-6(2)(b) as if those individuals were parents of the child~~]Subsections (2)(a) and (2)(b) as if the individual is the child's parent.

(3) Active, Retired, or Laid-Off Employee Rule.

(a)(i) [~~The plan that covers a person as~~]A plan covering an active employee who is [~~neither laid-off, nor retired, nor a~~]not laid-off, retired, or a dependent of an active employee, is the primary plan[~~, and the~~].

(ii) A plan covering [~~that same person as~~]a retired employee or a laid-off employee, or [~~as~~]a dependent of a retired employee or laid-off employee, is the secondary plan.

[~~(b) If the other plan does not have this rule, and the plans do not agree on the order of benefits, this rule is ignored.~~

~~(c) Subsection R590-131-6(3) does not apply if Subsection R590-131-6(1) can determine the order of benefits.~~]

(b) Subsection (3) does not apply if:

(i) the other plan does not have an active, retired, or laid-off rule and the plans do not agree on the order of benefits; or

(ii) Subsection (1) determines the order of benefits.

(4) [~~COBRA or State~~]Continuation of Coverage Rule.

(a) [~~If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan covering that same person pursuant~~

~~to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan~~]If an enrollee is covered under a continuation of coverage law and another plan, the plan under a continuation of coverage law is the secondary plan.

[~~(b) If the other plan does not have this rule, and the plans do not agree on the order of benefits, this rule is ignored.~~

~~(c) Subsection R590-131-6(3) does not apply if Subsection R590-131-6(1) can determine the order of benefits.~~]

(b) Subsection (4)(a) does not apply if:

(i) the other plan does not have a continuation of coverage rule and the plans do not agree on the order of benefits; or

(ii) Subsection (1) determines the order of benefits.

(5) Longer or Shorter Length of Coverage Rule.

(a) [~~If the preceding rules~~]If Subsections (1) through (4) do not determine the order of benefits[~~,~~]:

(i) the plan [~~that covered the person for the longer period of time~~]covering an enrollee for the longest time period is the primary plan; and

(ii) the plan [~~that covered the person for the shorter period of time~~]covering an enrollee for the shortest time period is the secondary plan.

(b)(i) To determine the length of time [~~a person has been~~]an enrollee is covered under a plan, two successive plans [~~shall be~~]are treated as one if the [~~claimant~~]enrollee was eligible under the second plan within 24 hours after coverage under the first plan ended.

(ii) The start of a new plan does not include:

(A) a change in the amount or scope of a plan's benefits;

(B) a change in the entity that pays, provides, or administers the plan's benefits; or

(C) a change from one type of plan to another, such as[~~,~~] from a single employer plan to a multiple employer plan.

[~~(iii) The person's length of time~~](iii)(A) The time an enrollee is covered under a plan is measured from the [~~person's~~]enrollee's first date of coverage under that plan.[~~ If that date~~]

(B) If the date in Subsection (5)(b)(iii)(A) is not readily available, the date the [~~person~~]enrollee first became a member of the group [~~shall be used as the date to~~]will determine the length of time [~~the person's coverage under the present plan has been in force~~]the enrollee is covered under a plan.

(6) [~~If Section R590-131-6~~]If Subsections (1) through (5) cannot determine the primary plan, the plans shall equally share the allowable expense[~~s shall be shared equally between the plans~~].

(7)(a) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment[~~, except that no plan shall be~~].

(b) A plan is not required to pay more than it would have paid [~~had it been the~~]as a primary plan.

R590-131-7. Procedure to be Followed by Secondary Plan to Calculate Benefits and Pay a Claim.

(1) If a secondary plan [~~wishes to~~]coordinates benefits, the secondary plan shall:

(a) calculate the plan benefits it would have paid [~~on the claim in the absence of~~]absent any other health care coverage; and

(b) apply [~~that~~]the amount calculated [~~amount~~]in Subsection (1)(a) to any allowable expense [~~under its plan that is~~]unpaid by the primary plan.

(2) The secondary plan may reduce its payment amount so that when combined with the [~~amount paid by the~~]primary plan's payment, the total benefits paid or provided by all plans for the claim do not exceed 100% of the total allowable expense for that claim.

(3) The secondary plan shall credit to [~~its~~]the plan deductible any amounts it would have credited to [~~its~~]the plan deductible in the absence of other health care coverage.

R590-131-8. Miscellaneous Provisions.

(1) Reasonable Cash Value of Services.

(a) A secondary plan that provides [~~benefits~~]a benefit in the form of [~~services~~]a service may recover the reasonable cash value of providing the service[~~s~~] from the primary plan, [~~to the extent that benefits for~~]if the service[~~s are~~] is covered by the primary plan and [~~have not already~~]has not been paid or provided by the primary plan.

(b) Nothing in this [~~provision~~]Subsection may be interpreted to require a plan to reimburse [~~a covered person in cash for the~~]an enrollee the cash value of [~~services~~]a service provided by a plan[~~, which~~] that provides [~~benefits~~]a benefit in the form of [~~services~~]a service.

(2) Excess and Other Provisions.

(a) Except as provided in Subsection [~~R590-131-8(2)(b), no policy or plan subject to this rule may~~](2)(b), a conforming plan may not contain a provision that [~~its~~]the plan benefits are [~~"excess" or "always secondary"~~]excess or always secondary to any other plan or policy.

(b) [~~An~~]A blanket accident-only [~~blanket policy~~]plan may contain a provision that its benefits are [~~"excess" or "always secondary"~~]excess or always secondary to any other plan[~~ or policy~~].

(3) Non-conforming Plan.

[~~(c) A plan with COB rules that comply with these rules, which is called a conforming plan,~~](a) A conforming plan may coordinate benefits with a non-conforming plan[~~ that is "excess" or "always secondary" or that uses COB rules inconsistent with this rule, which is called a non-conforming plan, on the following basis:~~].

(i) [~~if~~]If the conforming plan is the primary plan, it shall pay or provide its benefits [~~on a primary basis~~]as the primary plan;

(ii) [~~if~~]If the conforming plan is the secondary plan, it shall pay or provide its benefits [~~first, but the amount of the benefits payable shall be determined as if the conforming plan were the secondary plan. In such a situation,~~]as the secondary plan, and the payment shall be the limit of the conforming plan's liability[~~;~~].

(iii) [~~if~~]If the non-conforming plan does not provide the information needed by the conforming plan to determine its benefits within a reasonable time after it is requested to do so, the conforming plan shall assume that the benefits of the non-conforming plan are identical to its own and shall pay its benefits accordingly[~~;~~].

(iv) [~~if~~]If the conforming plan receives information as to the actual benefits of the non-conforming plan, it may adjust any payments in compliance with Subsection 31A-26-301.6(14)(a)(ii)[~~; and~~].

[~~(v)(A) if the~~](b)(i) If a non-conforming plan reduces its benefits so that the [~~covered person~~]enrollee receives less in benefits than the [~~covered person~~]enrollee would have received had the conforming plan paid or provided its benefits as the secondary plan, and the non-conforming plan paid or provided its benefits as the primary plan, then the conforming plan shall advance to the [~~covered person~~]enrollee, or on behalf of the [~~covered person~~]enrollee, an amount equal to [~~such~~]the difference.

[~~(B)~~](ii) In no event shall the conforming plan advance more than the conforming plan would have paid had it been the primary plan, less any amount it had previously paid.

[~~(C)~~](iii) In consideration of [~~such~~]an advance, the conforming plan shall be subrogated to all rights of the covered

person against the non-conforming plan in the absence of subrogation.

(iv) An advance by the conforming plan shall be without prejudice to any claim it may have against a non-conforming plan in the absence of subrogation.

[~~(3) If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have paid had it been the primary plan.~~]

(4) Subrogation.

[~~COB clearly~~]COB differs from subrogation. [-]Provisions for [~~one~~]either COB or subrogation may be included in [~~health care benefit contracts~~]a contract without compelling the inclusion or exclusion of the other.

(5) Right To Receive and Release Needed Information.

(a) [~~Certain facts are needed to apply these COB rules and an insurer has the right to decide the facts it needs.~~

~~(b)~~]An insurer may obtain or give needed [~~facts from or give them to any other organization or personand it need not tell or obtain consent from any person to do this~~]information to another person without obtaining consent from an enrollee.

[~~(c)~~](b) To facilitate cooperation with insurers, guidelines for medical privacy issues are provided under Rule R590-206, Privacy of Consumer Financial and Health Information Rule, and [~~Title V of~~]Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 et. seq.

[~~(d) Each person~~](c) Each enrollee claiming benefits under a plan shall give the insurer any [~~facts it needs~~]information necessary to pay the claim.

(6) Right of Recovery.

(a) If [~~the amount of the payments made by~~]an insurer is paid more than [~~it should have paid~~]required under [~~the provisions of~~]this rule, subject to Section 31A-26-301.6, [~~it~~]the insurer may recover the [~~excess paid~~]overpayment from one or more of the following[~~, if they were paid by the insurer~~]:

(i) [~~an insured~~]the enrollee;

(ii) [~~a non-contracted~~]the provider;

(iii) [~~a contracted provider;~~

~~(iv) other insurance companies~~]an insurer; or

[~~(v) other organizations~~](iv) another organization.

(b) [~~Reversals of payments made due to issues related to this rule are limited to the time period stated in Section 31A-26-301.6, except as provided in Section 31A-21-313.~~

~~(c) It is the insurer's responsibility to see that the proper~~]The insurer is responsible for adjustments between insurers and providers[~~ are made~~].

(7) Notice to [~~Covered Persons. A plan shall, in its~~]Enrollee. The explanation of benefits provided to [~~covered persons, include the following language:~~]an enrollee shall include, "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

(8) If [~~otherwise~~]covered benefits are due to a loss [~~subject to~~]under Section 31A-22-306, [~~then~~]an accident and health insurer may exclude benefits covered by personal injury protection described in Subsection 31A-22-307(1)(a), up to[~~ the~~]:

(a) the personal injury protection benefit provided by motor vehicle insurance; or

(b) if motor vehicle insurance is not in effect, the minimum amount [~~required by Section~~]provided in Subsection 31A-22-307(1)(a)[~~, if motor vehicle insurance is not in effect~~].

(9) Facility of Payment.

(a) [~~A payment made under another plan may include~~]If a plan pays an amount that should have been paid under [~~the~~]an insurer's plan[~~, and if it does~~], the insurer may pay that amount to the [~~organization that made that payment~~]other plan.

(b) The amount [~~paid will then be~~]the insurer pays to the other plan is treated as [~~though it were~~]a benefit paid under the plan and the insurer will not have to pay that amount again[~~.~~

~~(c) The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services~~].

R590-131-9. COB Scenarios.

The [~~following~~]scenarios identified in this section are provided to [~~assist in demonstrating the~~]demonstrate the possible use of the COB rules.[~~:~~]

(1) Parents Not Married, Living Together, No Court [~~Decree~~]Order. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(a) [~~shall be~~]is:

(a)(i) the parent whose birthday falls earlier in the calendar year; then

[~~(b)~~](ii) the parent whose birthday falls later in the calendar year; or

[~~(c)~~](b)(i) if the parents have the same birthday, the plan that has covered the parent the longest; then

[~~(d)~~](ii) the plan that has covered the parent the shortest.

(2) Parents Divorced, Separated, [~~Or~~]or Not Living Together.

(a) [~~The court decree gives~~]A court order awards joint custody [~~with~~]to the parents, the father is responsible for the child's health care expenses or health care coverage, and the father has health care coverage. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(i) [~~shall be the~~]is:

(i) natural father;

(ii) step[-]mother;

(iii) natural mother;[~~ then~~]

(iv) step[-]father.

(b) [~~The court decree gives~~]A court order awards joint custody [~~with~~]to the parents, the order specifies the father is responsible for the child's health care expenses or health care coverage, the father does not have health care coverage, [~~but his wife does~~]and the father's wife has health care coverage. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(i) [~~shall be the~~]is:

(i) step[-]mother;

(ii) natural mother;[~~ then~~]

(iii) step[-]father.

(c) [~~The court decree gives~~]A court order awards custody to the father and requires both parents to [~~be responsible~~]share responsibility for the child's health care expenses or health care coverage. The father's [~~date of birth (DOB) 12/01~~]birthday is December 1, the step[-]mother's [~~DOB 02/17~~]birthday is February 17, the mother's [~~DOB 08/23~~]birthday is August 23, and the step[-]father's [~~DOB 01/10~~]birthday is January 1. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(ii) [~~shall be the~~]is:

(i) step[-]father;

(ii) step[-]mother;

(iii) natural mother;[~~ then~~]

(iv) natural father.

(d) A court [~~decree~~]order awards joint custody[~~ and~~], the father physical custody[~~. The court decree does not address~~], and

does not specify responsibility for the child's health care expenses or health care coverage. The father's [~~DOB is 12/01~~]birthday is December 1, the step[-]mother's [~~DOB is 02/17~~]birthday is February 17, the mother's [~~DOB is 08/23~~]birthday is August 23, and the step[-]father's [~~DOB is 01/10~~]birthday is January 10. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(iii) [~~shall be the~~]is:

(i) step[-]father;

(ii) step[-]mother;

(iii) natural mother;[~~ then~~]

(iv) natural[-] father.

(e) A court [~~decree~~]order awards joint custody and requires both parents to [~~be responsible~~]share responsibility for health care expenses or health care coverage. The child lives with the mother 51% of the year. The father's [~~DOB is 12/01~~]birthday is December 1, the step[-]mother's [~~DOB is 02/17~~]birthday is February 17, the mother's [~~DOB is 08/23~~]birthday is August 23, and the step[-]father's [~~DOB is 01/10~~]birthday is January 10. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(ii) [~~shall be the~~]is:

(i) step[-]father;

(ii) step[-]mother;

(iii) natural mother;[~~ then~~]

(iv) natural father.

(3) Parents Never Married, Not Living Together.

(a) [~~The parents are not living together and no~~]No court [~~decree~~]order exists. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(iv) [~~shall be the~~]is;

(i) custodial parent;

(ii) custodial parent's spouse;

(iii) non-custodial parent;[~~ and then~~]

(iv) non-custodial parent's spouse.

(b) [~~The parents are not living together and the~~]A court [~~decree~~]order awards custody to the mother, [~~but the decree~~]and does not address the child's health care expenses or health care coverage. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(iv) [~~shall be the~~]is:

(i) natural mother;

(ii) step[-]father;

(iii) natural father;[~~ then~~]

(iv) step[-]mother.

(4) [~~Children~~]Child No Longer [~~Minors~~]a Minor.

(a) A court [~~decree orders that~~]orders the natural father [~~is~~]to provide [~~insurance for the minor children~~]health care coverage for a child up to age 18 or while attending high school, whichever is later, and custody is awarded to the natural mother. [~~The dependents are age 18 and older~~]The child is now age 18, or older, no longer attends high school, and resides with the natural mother. The order of benefits [~~pursuant to~~]under Subsection R590-131-6(2)(b)(iv) [~~shall be the~~]is:

[~~(a)~~](i) natural mother;

[~~(b)~~](ii) step[-]father;

[~~(c)~~](iii) natural father;[~~ then~~]

[~~(d)~~](iv) step[-]mother.

(b) A court [~~decree orders that~~]orders the natural father [~~is~~]to provide [~~insurance for the minor child~~]health care coverage for a child up to age 18 or while attending high school, whichever is later, and custody is awarded to the natural mother. [~~The dependent is age 20 and does not reside at either parent's home~~]The child is now age 18, or older, no longer attends high school, and does not reside with either parent. The order of benefits [~~shall be based on~~]under Subsection R590-131-6(5)[~~, Longer or Shorter Length of Coverage.~~] is:

(i) the plan covering an enrollee for the longest period;

(ii) the plan covering an enrollee for the shortest period.

R590-131-10. [~~Effective Date for Existing Contracts.~~

~~A contract that provides health care benefits issued before the effective date of this rule shall be brought into compliance with this rule no later than the first renewal date on or after January 1, 2021.~~

~~R590-131-11. Penalties.~~

~~Any insurer that fails to comply with the provisions of this rule shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.~~

~~R590-131-12.~~]Severability.

If any provision of this rule, R590-131, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule [~~which~~]that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law
Date of Last Change: 2022[~~July 22, 2020~~]
Notice of Continuation: September 29, 2017
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-619

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-219**	**Filing ID 54702**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-219. Credit Scoring

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual. Other changes make the language of this rule more clear, remove the current Section R590-219-7 because this rule is already in force, and update the new Section R590-219-7 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31-22-320	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/21/2022

R590. Insurance, Administration.
R590-219. Credit Scoring.
R590-219-1. Authority.

This rule is promulgated [~~pursuant to Subsection 31A-2-201(3)(a) in which the commissioner may make rules to implement the provisions of this title. Also, specific authority is provided in Subsection 31A-22-320(3) to enforce the provisions of Section 31A-22-320~~]by the commissioner pursuant to Sections 31A-2-201 and 31-22-320.

R590-219-2. [~~Scope and~~]Purpose and Scope.

[~~This rule sets~~](1) The purpose of this rule is to set forth minimum standards for [~~all~~]a property and casualty insurer[~~s~~] doing private passenger automobile business[~~ in Utah~~].

(2) This rule applies to a property and casualty insurer that uses credit history or an insurance score as part of [~~their~~]its underwriting criteria or rating plans.

R590-219-3. Definitions.

[~~In addition to the definitions in Section 31A-1-301 and 31A-22-320, the following definition shall apply for the purposes of this rule~~]Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-320. Additional terms are defined as follows:

(1) "Adverse action" is defined in the Fair Credit Reporting Act, 15 U.S.C. Sec 1681 et seq.

(a) "Adverse action" includes:

(i) cancellation, denial, or non-renewal of insurance coverage; and

(ii) charging a higher premium than would have been offered if the credit history or credit score had been more favorable, whether the charge is by:

(A) application of a rating rule;

(B) assignment to a rating category within a single insurer, into which insureds with substantially like risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates;

(C) placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or

(D) a reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score.

(b) A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

(i) coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

(ii) the consumer is not eligible for a benefit, such as a dividend, that is available through an affiliate insurer.

(2)(a) "Initial underwriting" [~~shall~~]includes:

(i)[~~deciding whether or not~~] the decision whether to issue a policy to the consumer;

(ii) the amount and terms of the coverage;

(iii) the duration of the policy;

(iv) the rates or fees charged; and

(v) [~~those~~]the additional drivers related to the named insured or spouse by blood, marriage, adoption, or guardianship who were emancipated before[~~prior to~~] becoming an additional driver in the named insured's household.

(b) "Initial underwriting" [~~shall~~]does not include an additional vehicle[~~s~~] or driver[~~s~~] added to the household of a current auto insurance policyholder of the insurer, provided:

(i) the additional vehicle is owned by the named insured, spouse, or [~~persons~~]a person related to the named insured by blood, marriage, adoption, or guardianship that [~~are residents~~]is a resident of the named insured's household;

(ii) the additional driver is related to the named insured or spouse by blood, marriage, adoption, or guardianship and is a resident of the named insured's household, including [~~those~~]a person who usually makes their home in the same household but temporarily lives elsewhere[~~.~~]; or

(iii) the additional driver is a divorced spouse or child [~~where~~]for whom an insurer has a record of the driving history from an existing policy.

[~~(2) "Adverse action" shall have the same meaning as defined in the Fair Credit Reporting Act, 15 U.S.C. sec.1681 et seq. An adverse action includes the following:~~

~~(a) cancellation, denial or non-renewal of insurance coverage;~~

~~(b) charging a higher premium than would have been offered if the credit history or credit score had been more favorable, whether the charge is by:~~

~~(i) application of a rating rule;~~

~~(ii) assignment to a rating category within a single insurer, into which insureds with substantially like risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates;~~

~~(iii) placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or~~

~~(iv) a reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score.~~

~~(c) A reduction or an adverse or unfavorable change in the terms of coverage occurs when:~~

~~(i) coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or~~

~~(ii) the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.~~]

R590-219-4. Insurer's Obligation If Credit Information Is Used.

(1) An insurer [~~must~~]shall comply with [~~all notification requirements of~~]the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(2) If [~~any~~]an adverse action is taken, [~~the insurance company must~~]an insurer shall provide to the applicant or insured:

(a) the identity, telephone number, and address of any consumer-reporting agency from which a credit report was obtained;

(b) notification of the applicant's or insured's right to receive a free copy of their credit report from the consumer[~~-~~]-reporting agency for [~~a period of~~]60 days from the date of application; and

(c) notification of the applicant's or insured's right to [~~lodge~~]file a dispute with the consumer-reporting agency and have erroneous information corrected in accordance with the Fair Credit Reporting Act.

[~~(2)~~](3)(a) After an adverse action is taken, if it is later determined that the initial information in the credit report was incorrect, the insurance company, at the request of the applicant or insured, shall underwrite or rate the policy again using the correct information.

(b) If the insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

[~~(3)~~](4) An insurer shall establish procedures that allow [~~consumers or their insurance producers~~]a consumer or an insurance producer to request that a person's credit history or score be re-examined if a correction has been made to the consumer's credit report.

[~~(4) An insurer shall refrain from penalizing consumers on new and renewal policies~~](5) An insurer may not penalize a consumer on a new or renewal policy issued on or after the effective date of this rule based on:

(a) identity theft;

(b) a credit [~~inquiries~~]inquiry not initiated by the consumer;

(c) an insurance-related [~~inquiries~~]inquiry;

(d) a medical related collection account[~~s~~], if the information can be identified on a credit report; and

(e) multiple lender inquiries, if captured on a credit report as being from the home mortgage industry and made within a 30[-]-day period, unless only one inquiry is considered.

R590-219-5. Prohibited Uses of Credit Information.

[~~Insurers~~]An insurer may not use credit information:

(1) to cancel or non-renew [~~any~~]a private passenger auto insurance policy that has been in effect for 60 days or more;

(2) for initial underwriting, unless risk related factors, other than credit information, are considered;

(3) to determine rates as part of a filed rating plan for private passenger auto insurance, except to provide a premium discount or similar reduction in rates and, when an insurer issues a new or renewal policy on or after the effective date of this rule with a discount based on credit, that discount [~~shall~~]may not be removed or reduced based on credit information only;

(4) to cancel or non-renew an existing private passenger auto insurance policy [~~which~~]that has been in effect for 60 days or more, nor decline or refuse to issue a new policy or coverage for an additional vehicle owned by the named insured or a person[~~s~~] related to the named insured by blood, marriage, adoption, or guardianship, and who [~~are~~]is a resident[~~s~~] of the named insured's household; or

(5) to cancel or non-renew an existing private passenger auto insurance policy [~~which~~]that has been in effect for 60 days or more when adding a newly licensed driver [~~who is~~]related to the named insured by blood marriage, adoption, or guardianship, and who continues to be a resident of the named insured's household.

R590-219-6. Offer of Placement.

[~~An offer of placement~~]Placing a policy with an affiliated insurance company is not [~~considered~~]a cancellation, non-renewal, declination, or refusal to issue a policy.

R590-219-7. [~~Enforcement Date.~~

~~The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.~~

~~R590-219-8.~~]Severability.

[~~If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~]If any provision of this rule, Rule R590-219, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance, credit scoring
Date of Last Change: 2022[~~June 13, 2003~~]
Notice of Continuation: May 4, 2018
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-320

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R590-248**	**Filing ID 54703**

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129

Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R590-248. Mandatory Fraud Reporting Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

This rule is being repealed because the Department of Insurance (Department) does not use it for enforcement purposes. The parts of the rule that are pertinent and enforceable are already contained in Title 31A of the Utah Code, making this rule unnecessary.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The rule is being repealed in its entirety.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The pertinent and enforceable parts of the rule are already contained in Title 31A, Insurance Code, so the Department's fraud fighting activities will continue unhindered after this repeal.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and insurers licensed by it. It does not affect local governments in any way.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There is no anticipated cost or savings to small businesses. This rule governs the relationship between the Department and insurers licensed by it. It does not affect small businesses in any way.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There is no anticipated cost or savings to non-small businesses. The pertinent and enforceable parts of this rule are already contained in Title 31A, so the Department's fraud fighting activities will continue unhindered after this repeal. Licensed insurer, which are all non-small businesses, will continue to report fraud to the department under Title 31A.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There is no anticipated cost or savings to any other persons. This rule governs the relationship between the Department and insurers licensed by it. It does not affect any other persons.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for any affected persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed repeal will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0

Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-31-110	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/21/2022

R590. Insurance, Administration.

[~~**R590-248. Mandatory Fraud Reporting Rule.**~~

~~**R590-248-1. Authority.**~~

~~This rule is promulgated pursuant to Section 31A-2-201(3)(a), which authorizes rules to implement the Insurance Code and 31A-31-110, which authorizes a rule to provide a process by which a person shall report a fraudulent insurance act.~~

~~**R590-248-2. Purpose and Scope.**~~

~~(1) The purposes of this rule are to:~~

~~(a) describe the required elements in a mandatory fraud report; and~~

~~(b) establish a reporting process for fraud reports.~~

~~(2) This rule applies to:~~

~~(a) all insurers doing the business of insurance in Utah; and~~

~~(b) all auditors employed by a title insurer doing the business of title insurance in Utah.~~

~~**R590-248-3. Mandatory Elements of a Fraud Report.**~~

~~A mandatory fraud report shall:~~

~~(1) be in writing;~~

~~(2) provide information in detail relating to:~~

~~(a) the fraudulent insurance act; and~~

~~(b) the perpetrator of the fraudulent insurance act; and~~

~~(3) state whether the person submitting the report of a fraudulent insurance act also reported the fraudulent insurance act in writing to:~~

~~(a) the attorney general;~~

~~(b) a state law enforcement agency;~~

~~(c) a criminal investigative department or agency of the United States;~~

~~(d) a district attorney; or~~

~~(e) the prosecuting attorney of a municipality or county; and~~

~~(4) state the agency to which the person reported the fraudulent insurance act.~~

~~**R590-248-4. Mandatory Fraud Reporting Process.**~~

~~(1) The following persons shall report a fraudulent insurance act to the commissioner if the person has a good faith belief on the basis of a preponderance of the evidence that a fraudulent insurance act is being, will be, or has been committed by:~~

~~(a) a person other than the person making the report:~~

~~(b) an insurer; or~~

~~(c) an auditor that is employed by a title insurer.~~

~~(2) An auditor employed by a title insurer shall report a fraudulent act to the title insurer and the title insurer shall report the fraudulent act in accordance with this subsection.~~

~~(3) An insurer shall submit mandatory fraud reports electronically.~~

~~(4) An insurer shall report a fraudulent insurance act by:~~

~~(a) submitting a report to the commissioner using the National Insurance Crime Bureau (NICB) fraud reporting system; or~~

~~(b) submitting a report directly to the commissioner using email sent to fraud@utah.gov.~~

~~**R590-248-5. Penalties.**~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~**R590-248-6. Enforcement Date.**~~

~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

~~**R590-248-7. Severability.**~~

~~If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

~~**KEY: insurance, mandatory fraud reporting**~~
~~**Date of Last Change: April 7, 2017**~~
~~**Notice of Continuation: December 21, 2018**~~
~~**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-31-110**~~**]**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R628-17**	**Filing ID 54723**

Agency Information

1. Department:	Money Management Council	
Agency:	Administration	
Room no.:	Suite 180	
Building:	State Capitol	
Street address:	350 N. State Street	
City, state and zip:	Salt Lake City, UT 84114-2315	
Mailing address:	PO Box 142315	
City, state and zip:	Salt Lake City, UT 84114-2315	
Contact person(s):		
Name:	**Phone:**	**Email:**
Ann Pedroza	801-538-1883	apedroza@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R628-17. Limitations on Commercial Paper and Corporate Notes

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The reason for this change is to lower the percentage that smaller public entities can hold of anyone issuer of corporates and commercial paper. The Money Management Council discussed the issue at the five-year review of this rule and it was noted that 10% of a small portfolio is substantial for entities with portfolios under $20,000,000 and could expose a smaller public entity to loss.

There are also nonsubstantive changes included to clean up the original rule changing statute citations from sections to subsections, and adding a comma.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This change brings the percentage of one issuer held by smaller portfolios of $20,000,000 or less, down to 5% of the total portfolio and gives public treasurers holding investments under the old percentage the ability to allow the security to mature with no penalty.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings for the state budget. The change affects local governments.

B) Local governments:

There is no anticipated cost or savings for local governments. The investments are governed by markets and it is not possible to tell if there would be a cost or savings.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule does not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This rule does not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule does not affect other persons.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There will be no compliance costs as the change allows that any investment that is over the new limit of 5% may be held to maturity so the entities will not have to sell and take potential losses.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

I have determined that there is no fiscal impact on business associated with this amendment. K. Wayne Cushing, Chair

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be

included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Chair of the Utah Money Management Council, K. Wayne Cushing, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 51-7-18(2)(b)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022
10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	C. Wayne Cushing, Chair	**Date:**	06/30/2022

R628. Money Management Council, Administration.
R628-17. Limitations on Commercial Paper and Corporate Notes.
R628-17-1. Authority.

This rule is issued pursuant to Sub[~~S~~]section 51-7-18(2)(b).

R628-17-2. Scope.

This rule establishes limits on the dollar amount of public funds that a public treasurer may invest in commercial paper or corporate obligations of a single issuer.

R628-17-3. Purpose.

The purpose of this rule is to provide guidelines for treasurers when investing public funds in commercial paper or corporate obligations. The guidelines established by this rule are designed to be flexible enough to allow public treasurers to receive competitive market rates on funds placed in these types of investment instruments while maintaining sufficient protection from loss.

R628-17-4. Definitions.

For the purpose of this rule:

Commercial paper means: an unsecured promissory note that matures on a specific date, and is issued by industrial, utility, and finance companies. The commercial paper must meet the criteria for investment as described in Sub[~~S~~]section 51-7-11(3).

Corporate obligation means: A secured or unsecured note with original term to maturity ranging from nine months to thirty years that is issued by an industrial, utility, or finance company. The corporate obligation must meet the criteria for investment as described in Sub[~~S~~]section 51-7-11(3).

R628-17-5. General Rule.

The maximum amount of any public treasurer's portfolio which can be invested in a single issuer of commercial paper and corporate obligations shall be 5% of the total portfolio. The preceding sentence shall not apply to any investment held by a public treasurer before the effective date of August 22, 2022 and the public treasurer may hold such investment until its maturity.[~~as follows:~~

~~1. Portfolios of $10,000,000 or less may not invest more than 10% of the total portfolio with a single issuer.~~

~~2. Portfolios greater than $10,000,000 but less than $20,000,000 may not invest more than $1,000,000 in a single issuer.~~

~~3. Portfolios of $20,000,000 or more may not invest more than 5% of the total portfolio with a single issuer.~~]

The amount or percentages used in determining the amount of commercial paper and or corporate obligations a treasurer may purchase, shall be determined by the book value of the portfolio at the time of purchase.

KEY: public investments, securities, securities regulations
Date of Last Change: 2022[~~January 9, 2007~~]
Notice of Continuation: March 25, 2022
Authorizing, and Implemented or Interpreted Law: 51-7-18(2)(b)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R649-1**	**Filing ID 54721**

Agency Information

1. Department:	Natural Resources	
Agency:	Oil, Gas and Mining; Oil and Gas	
Building:	Natural Resources	
Street address:	1594 W North Temple, Suite 1210	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Natasha Ballif	801-589-5486	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R649-1. Oil and Gas Definitions

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

S.B. 146 passed in the 2022 General Session amended the definition in Section 40-6-2. This rule amendment will reflect the same definition changes the legislature made to Section 40-6-1 et seq.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This change only affects the definition of "oil." It will clarify that crude oil will include hydrocarbons that are produced in liquid form at the wellhead, and will also clarify that oil and gas may include tar sands produced at the wellhead if it's in liquid form.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is a total of one state agency, The Division of Oil, Gas and Mining (Division), that will be associated with this change. This change will be cost neutral as it moves regulatory authority of liquid tar sand production from one program within the Division into a different program.

B) Local governments:

This rule does not apply to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There are 303 small business oil and gas operators (for a complete listing of North American Industry Classification System (NAICS) codes used in this analysis, please contact the agency) in the state of Utah. This rule amendment will not fiscally affect oil and gas operators.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

There are a total of 4 non-small business oil and gas operators (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the state of Utah. This rule amendment will not fiscally affect oil and gas operators.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change will not affect persons other than small businesses, non-small businesses, or state or local government entities.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There will be no compliance costs for oil and gas operators.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This proposed rule change will not have a fiscal impact on businesses. Brian Steed; Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 40-6-1 et seq.		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/24/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	**Date:**	06/30/2022

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-1. Oil and Gas Definitions.
R649-1-1. Definitions.

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including any agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of any of such actions.

"Agency" means the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining including the director or division employees acting on behalf of or under the authority of the director or board.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Application for Permit to Drill, Deepen or Plug Back" or "APD" means the Form 3 submission required under Section R649-3-4 with the division.

"Aquifer" means a geological formation including a group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Artificial Liner" means a pit liner made of material other than clay or other in-situ material that meets the requirements of Section R649-9-3, Permitting of Disposal Pits.

"Authorized Agent" means a representative of the director as authorized by the board.

"Authority for Expenditure" or "AFE" is a detailed written statement made in good faith by an operator memorializing the total estimated costs to be incurred in the drilling, testing, completion and equipping of a well for oil and gas operations.

"Barrel" means 42 gallons at 60 degrees Fahrenheit at atmospheric pressure.

"Board" means the Board of Oil, Gas and Mining.

"Carrier, Transporter or Taker" means any person moving or transporting oil or gas away from a well or lease or from any pool.

"Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Central Disposal Facility" means a facility that is used by one or more producers for disposal of exempt E and P wastes and that the operator of the facility receives no monetary remuneration, other than operating cost sharing.

"Class II Injection Well" means a well that is used for:

1. the disposal of fluids that are brought to the surface in connection with conventional oil or natural gas production and that may be commingled with wastewater produced from the operation of a gas plant that is an integral part of production operations, unless

that wastewater is classified as a hazardous waste at the time of injection;

2. enhanced recovery of oil or gas; or

3. storage of hydrocarbons that are liquids at standard temperature and pressure conditions.

"Closed System" means the use of a combination of solids control equipment including a shale shaker, flowline cleaner, desanders, desilters, mud cleaners, centrifuges, agitators, and any necessary pumps and piping incorporated in a series on the rig's steel mud tanks, or a self contained unit that eliminates the use of a reserve pit to dump and dilute drilling fluids for the removal of entrained drill solids. A closed system for the purpose of these rules may with Division approval include the use of a small pit to receive cuttings, but does not include the use of trenches for the collection of fluids of any kind.

"Coalbed Methane" means natural gas that is produced, or may be produced, from a coalbed and rock strata associated with the coalbed.

"Commercial Disposal Facility" means a disposal well, pit or treatment facility whose owner or operator receives compensation from others for the temporary storage, treatment, and disposal of produced water, drilling fluids, drill cuttings, completion fluids, and any other exempt E and P wastes, and whose primary business objective is to provide these services.

"Completion of a Well" means that the well has been adequately worked to be capable of producing oil or gas or that well testing as required by the division has been concluded.

"Confining Strata" refers to a body of material that is relatively impervious to the passage of liquid or gas and that occurs either below, above, or lateral to a more permeable material in such a way that it confines or limits the movement of liquids or gases that may be present.

"Correlative Rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.

"Cubic Foot" of gas means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 psia and a standard temperature base of 60 degrees Fahrenheit.

"Day" means a period of 24 consecutive hours.

"Development Wells" means any oil and gas producing wells other than wildcat wells.

"Director" means the executive and administrative head of the division.

"Disposal Facility" means an injection well, pit, treatment facility or combination thereof that receives E and P Wastes for the purpose of disposal. This includes both commercial and noncommercial facilities.

"Disposal Pit" means a lined or unlined pit approved for the disposal or storage of E and P Wastes.

"Division" means the Division of Oil, Gas and Mining.

"Drilling Fluid" means a circulating fluid usually called mud, that is introduced in a drill hole to lubricate the action of the rotary bit, remove the drilling cuttings, and control formation pressures.

"E and P Waste" means Exploration and Production Waste, and is defined as waste resulting from the drilling of and production from an oil and gas well as determined by the Environmental Protection Agency (EPA), prior to January 1, 1992, to be exempt from Subtitle C of the Resource Conservation and Recovery Act (RCRA).

"Emergency Pit" means a pit used for containing any fluid at an operating well during an actual emergency or for a temporary period of time.

"Enhanced Recovery" means the process of introducing fluid or energy into a pool for the purpose of increasing the recovery of hydrocarbons from the pool.

"Enhanced Recovery Project" means the injection of liquids or hydrocarbon or non-hydrocarbon gases directly into a reservoir for the purpose of augmenting reservoir energy, modifying the properties of the fluids or gases in the reservoir, or changing the reservoir conditions to increase the recoverable oil, gas, or oil and gas through the joint use of two or more well bores.

"Entity" means a well or a group of wells that have identical division of interest, have the same operator, produce from the same formation, have product sales from a common tank, LACT meter, gas meter, or are in the same participating area of a properly designated unit. Entity number assignments are made by the division in cooperation with other state government agencies.

"Field" means the general area underlaid by one or more pools.

"Gas" means natural gas or natural gas liquids or other gas or any mixture thereof defined as follows:

1. "Natural Gas" means those hydrocarbons, other than oil and other than natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form. Natural gas includes coalbed methane.

2. "Natural Gas Liquids" means those hydrocarbons initially in reservoir natural gas, regardless of gravity, that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation, absorption, adsorption, or other methods.

3. "Other Gas" means hydrogen sulfide (H_2S), carbon dioxide (CO_2), helium (He), nitrogen (N), and other nonhydrocarbon gases that occur naturally in the gaseous phase in the reservoir or are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.

"Gas-Oil Ratio" means the ratio of the number of cubic feet of natural gas produced to the number of barrels of oil concurrently produced during any stated period. The term GOR is synonymous with gas-oil ratio.

"Gas Processing Plant" means a facility in which liquefiable hydrocarbons are removed from natural gas, including wet gas or casinghead gas, and the remaining residue gas is conditioned for delivery for sale, recycling or other use.

"Gas Well" means any well capable of producing gas in substantial quantities that is not an oil well.

"Ground Water" means water in a zone of saturation below the ground surface.

"Hearing" means any matter heard before the board or its designated hearing examiner.

"Horizontal Well" means a well bore drilled laterally at an angle of at least 80 degrees to the vertical or with a horizontal projection exceeding one hundred feet measured from the initial point of penetration into the productive formation through the terminus of the lateral in the same common source of supply.

"Illegal Oil or Illegal Gas" means oil or gas that has been produced from any well within the state in violation of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining, or any rule or order of the board.

"Illegal Product" means any product derived in whole or in part from illegal oil or illegal gas.

"Incremental Production" means that part of production that is achieved from an enhanced recovery project that would not have economically occurred under the reservoir conditions existing

before the project and that has been approved by the division as incremental production.

"Injection or Disposal Well" means any Class II Injection Well used for the injection of air, gas, water or other substance into any underground stratum.

"Interest Owner" means a person owning an interest, which may include working interest, royalty interest, payment out of production, or any other interest, in oil or gas, or in the proceeds thereof.

"Joint Operating Agreement" or "JOA" is an agreement for the exploration, development, and production for oil, gas or other minerals between parties entitled to participate pursuant to the ownership of said minerals or leaseholds covering said minerals, which are subject to the contract area, which may be inclusive of a drilling unit, described therein.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Load Oil" means any oil or liquid hydrocarbon that is used in any remedial operation in an oil or gas well.

"Log or Well Log" means the written record progressively describing the strata, water, oil or gas encountered in drilling a well with such additional information as is usually recorded in the normal procedure of drilling including electrical, radioactivity, or other similar conventional logs, a lithologic description of samples and drill stem test information.

"Multiple Zone Completion" means a well completion in which two or more separate zones, mechanically segregated one from the other, are produced simultaneously from the same well.

"Notice of Opportunity to Participate" means the written notice of opportunity to participate in a well for oil and gas operations required under Subsection 40-6-2(4) and (12) to be provided to an owner and which includes an offer to lease if the owner is an unleased owner, and an offer for the owner to directly participate financially, in proportion to the owner's interest in the drilling, testing, completion, equipping and operation of the subject well and which includes:

1. the approximate surface and, bottom hole location of the subject well by county, township, range, section, quarter-quarter section or substantially equivalent lot, and footages from directional section lines;

2. the proposed well name;

3. the proposed total distance from the surface of the ground to the terminus measured along the vertical and lateral components if the well is a horizontal well;

4. the proposed total depth;

5. the objective productive zone and the approximate depth and locations of producing intervals in the borehole;

6. the approximate date upon which the subject well was or will be spud;

7. a joint operating agreement proposed in good faith by the operator for operation of the drilling unit upon which the subject well is to be drilled;

8. an AFE for the subject well;

9. a statement that a refusal to agree to either lease or participate in the subject well may result in the imposition of the statutory risk compensation award allowed under Subsection 40-6-6.5(4)(d)(i)(D) of between 150% and 400% as determined by the board; and

10. a statement that any initial compulsory pooling order may apply to subsequent wells within the drilling unit including any statutory risk compensation award imposed under Utah law pursuant to Subsection 40-6-6.5(12).

"Oil" means crude oil or condensate or any mixture thereof, defined as follows:

1. "Crude Oil" means those hydrocarbons, regardless of gravity, that [~~occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form~~]are produced at the wellhead in liquid form and occur naturally in the liquid phase in the reservoir or are produced through enhanced recovery operations authorized by the board in accordance with Subsection 40-6-5(3)(c).

2. "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the well bore or at the surface in field separators.

3. "Oil and Gas" may not include gaseous or liquid substances derived from coal, oil shale, tar sands or other hydrocarbons classified as synthetic fuel, except tar sands produced at the wellhead in liquid form through enhanced recovery operations authorized by the board in accordance with Subsection 40-6-5(3)(c).

"Oil and Gas Field" means a geographical area overlying an oil and gas pool.

"Oil Well" means any well capable of producing oil in substantial quantities.

"Operator" means the person who has been designated by the owners or the board to operate a well or unit.

"Operatorship" means the exclusive right, privilege and obligation of exercising any rights granted by the owners or the board to act as operator of a well or drilling unit which rights are necessary and effective for prospecting for, producing, storing, allocating and distributing oil and gas extracted from a well or a drilling unit.

"Owner" means the person who has the right to drill into and produce from a reservoir and to appropriate the oil and gas that they produce, either for themselves and others.

"Party" means the board, division, or other person commencing an adjudicative proceeding, any respondents, any persons permitted by the board to intervene in the proceeding, and any persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Pit" means an earthen surface impoundment constructed to retain fluids and oil field wastes.

"Pollution" means such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, or the discharge of any liquid, gaseous or solid substance into any waters of the state in such manner as will create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

"Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."

"Preparation for Drilling" means:

1. mobilization of drilling equipment; or

2. erecting a drilling rig; or

3. diligently engaging in other work necessary to prepare the well site, including commencement of access road and pad construction.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. The board, or its appointed hearing examiner, may be considered the presiding officer of any appeals or informal adjudicative proceedings that is commenced before the division as well as any adjudicative proceeding that is commenced before the board. The director or his designated agent may be considered a presiding officer for any informal adjudicative proceedings that is commenced before the division. If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

"Pressure Maintenance" means the injection of gas, water or other fluids into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

"Produced Water" means water produced in conjunction with the conventional production of oil or gas.

"Producer" means the owner or operator of a well capable of producing oil or gas.

"Producing Well" means a well capable of producing oil or gas.

"Product" means any commodity made from oil and gas.

"Production Facilities" means any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells or injection wells, prior to any processing plant or refinery.

"Purchaser or Transporter" means any person who, acting alone or jointly with any other person, by means of his own, an affiliated, or designated carrier, transporter or taker, shall directly or indirectly purchase, take or transport by any means whatsoever, or who shall otherwise remove from any well or lease, oil or gas produced from any pool, excepting royalty portions of oil or gas taken in kind by an interest owner who is not the operator.

"Recompletion" means any completion in a new perforated interval or pool within an established wellbore and approved as a recompletion by the division.

"Refinery" means a facility, other than a gas processing plant, where controlled operations are performed by which the physical and chemical characteristics of petroleum or petroleum products are changed.

"Reserve Pit" means a pit used to retain fluid during the drilling, completion, and testing of a well.

"Resource Detriment" means: damage, harm or detriment to the mineral estate or oil and gas formation; pollution or surface damages as specified in Section R649-3-15; damage, harm or detriment to the surface estate or Surface Land as defined in Subsection 40-6-2(25); damage to a Surface land owner's property as defined in Subsection 40-6-2(27); or damage, harm or detriment to livestock or wildlife.

"Respondent" means any person against whom an adjudicative proceeding is initiated whether by an agency or any other person.

"Seismic Operator" means a person who conducts seismic exploration for oil or gas, whether for themselves or as a contractor for others.

"Shut-in Well" means a well that is completed, is shown to be capable of production in paying quantities, and is not presently being operated.

"Spud In" means the first boring of a hole in the drilling of a well by any type of rig.

"State" means the State of Utah.

"Stratigraphic Test or Core Hole" means any hole drilled for the sole purpose of obtaining geological information. The general rules applicable to the drilling of a well will apply to the drilling of a stratigraphic test or core hole.

"Temporarily Abandoned Well" means a well that is completed, is shown not capable of production in paying quantities, and is not presently being operated.

"Temporary Spacing Unit" means a specified area of land designated by the board for purposes of determining well density and location. A temporary spacing unit may not be a drilling unit as provided for in Section 40-6-6, Drilling Units, and does not provide a basis for pooling the interest therein as does a drilling unit.

"Underground Source of Drinking Water" (USDW) means a fresh water aquifer or a portion thereof that supplies drinking water for human consumption or that contains less than 10,000 mg/1 total dissolved solids and that is not an exempted aquifer under Section R649-5-4.

"Waste" means:

1. The inefficient, excessive or improper use or the unnecessary dissipation of oil or gas or reservoir energy.

2. The inefficient storing of oil or gas.

3. The locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations, or that causes unnecessary wells to be drilled, or that causes the loss or destruction of oil or gas either at the surface or subsurface.

4. The production of oil or gas in excess of:

4.1. Transportation or storage facilities.

4.2. The amount reasonably required to be produced in the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

5. Underground or above ground waste in the production or storage of oil or gas.

"Waste Crude Oil Treatment Facility" means any facility or site constructed or used for the purpose of wholly or partially reclaiming, treating, processing, cleaning, purifying or in any manner making non-merchantable waste crude oil marketable.

"Well" means an oil or gas well, injection or disposal well, or a hole drilled for the purpose of producing oil or gas or both. The definition of well may not include water wells, or seismic, stratigraphic test, core hole, or other exploratory holes drilled for the purpose of obtaining geological information only.

"Well Site" means the areas that are directly disturbed during the drilling and subsequent use of, or affected by production facilities directly associated with any oil well, gas well or injection well.

"Wildcat Wells" means oil and gas producing wells that are drilled and completed in a pool in which a well has not been previously completed as a well capable of producing in commercial quantities.

"Willful Violation" means any action or inaction done with conscious objective or desire to engage in the action or inaction that a reasonably prudent person would know is likely to cause a violation.

"Working Interest Owner" means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

"Workover" means any operation designed to sustain, to restore, or to increase the production rate, the ultimate recovery, or the reservoir pressure system of a well or group of wells and approved as a workover, a secondary recovery, a tertiary recovery, or a pressure maintenance project by the division. The definition may not include operations that are conducted principally as routine maintenance or the replacement of worn or damaged equipment.

KEY: oil and gas law
Date of Last Change: 2022[~~May 27, 2021~~]
Notice of Continuation: July 28, 2021
Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R651-104**	**Filing ID 54736**

Agency Information

1. Department:	Natural Resources	
Agency:	State Parks	
Street address:	1594 W North Temple, Suite 116	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146001	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R651-104. State Park Designations

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

This rule is established pursuant to Sections 79-4-202, 79-4-203, and 79-4-301 through 79-4-304. The director of the Division of State Parks (Division), as head of the Division and in consultation with the Board of State Parks, the authority to acquire, plan, protect, develop, operate, use, and maintain park areas.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This rule establishes proposal, research, consultation, and approval protocols for the evaluation, acquisition, and designation of new State Parks under the Division of State Parks' management.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There may be costs associated with acquiring, planning, protecting, developing, and operating park areas at a future time. The cost would be unknown until such efforts took place.

B) Local governments:

There would be no cost or savings to local governments because they are state park areas.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There is no known cost or savings to small businesses due to the nature of state park designation approvals.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This rule proposal should not have any fiscal impact on non-small businesses as there are no business proceedings outlined in the designation process.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

Currently there is no cost impact to any known entity in the implementation of this rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no associated costs for affected persons as outlined in the state park designations proposal.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule will not fiscally impact business. Brian Steed, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be

included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 79-4-202-203	Section 79-4-301-304	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022
10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	**Date:**	06/21/2022

R651. Natural Resources, State Parks.
R651-104. State Park Designations.
R651-104-1. Authority and Effective Date.

This rule is established pursuant to Sections 79-4-202, 79-4-203, and 79-4-301 through 79-4-304, which provide the director of the Division of State Parks, as head of the Division and in consultation with the Board of State Parks, may acquire, plan, protect, develop, operate, use, and maintain park areas.

R651-104-2. Purpose.

This rule establishes proposal, research, consultation, and approval protocols for the evaluation, acquisition, and designation of new State Parks under the Division's management.

R651-104-3. Definitions.

(1) "Board" means the Board of State Parks, which is the policy making body of the Division.

(2) "Division" means the Division of State Parks.

(3) "State Park" or "State Parks," as used in this rule, means unique areas of real property in Utah set aside by the Division to preserve scenic beauty, recreational utility, or historic, archaeologic, or scientific interest, to the end that health, happiness, and the wholesome enjoyment of state lands through recreational opportunities may be preserved.

R651-104-4. Appropriate Attributes for a State Park.

Proposed State Parks should provide or possess:

(1) diverse, multi-use outdoor recreation experiences;

(2) resources of statewide significance, including areas of scenic beauty, recreational utility, or of historic, archaeologic, or scientific interest;

(3) features, opportunities, experiences, and amenities that make the State Park's preservation important to the overall quality of life for visitors to enjoy, including:

(a) unique scenic values or unique natural attributes;

(b) outdoor recreation areas or unmet services that are in demand by the public; and

(c) value or quality in illustrating or interpreting the natural or cultural themes of Utah's heritage.

(4) sufficient acreage and the capacity to generate necessary revenue to cover ongoing operating costs.

R651-104-5. State Park Designation Process.

(1) Proposals for new State Parks may be submitted to Division administration from federal agencies, state leadership, local officials, or tribal entities.

(2) After a proposal is received, the Division shall:

(a) consult with any stakeholders tasked with management of the areas concerned;

(b) review the proposal to ensure the proposed State Park, if acquired and designated, would conform with Utah laws and rules, policies, and guidelines applicable to the Division;

(c) meet with city and county officials regarding any State Park proposal that lies within their geographic borders. If the city and county governing bodies oppose the designation of the proposed State Park, the Division will not approve the proposal;

(d) submit the proposal to the Governor's office for review and comment; and

(e) collaborate with the Director of the Division of History for comment when a proposal may have historical and archaeological significance.

(3) After the Division has completed the actions required by Subsection R651-104-5(2), the Division shall undertake a feasibility analysis of the proposed State Park. The feasibility analysis shall include, but not necessarily be limited to, consideration of the attributes described in Section R651-104-4 and the information learned through completion of the actions required by Subsection R651-104-5(2).

(4) If, pursuant to the feasibility analysis required by Subsection R651-104-5(3), the Division determines the proposed State Park is feasible, the Division shall submit the proposal, the feasibility analysis, and any other accompanying supporting documentation, to the Board for its review and comment.

(5) After the actions required by Subsections R651-104-5(1) through (4) are complete, and the Division has reviewed the Board's comments, the Division will either approve or disapprove the proposal.

KEY: parks
Date of Last Change: 2022
Authorizing, and Implemented or Interpreted Law: 79-4-202; 79-4-203; 79-4-301; 79-4-302; 79-4-303; 79-4-304

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R651-601**	**Filing ID 54708**

Agency Information

1. Department:	Natural Resources
Agency:	State Parks
Building:	Department of Natural Resources
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146001
City, state and zip:	Salt Lake City, UT 84114-6001

Contact person(s):		
Name:	**Phone:**	**Email:**
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R651-601. Definitions as Used in These Rules

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The purpose of this change is to streamline language as it pertains to permitting processes within Utah State Parks and clarify and combine definitions.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The rule change outlined makes clarifying changes to definitions of permits and special use permits for Utah State Parks operations.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This proposed rule amendment is intended to expand definitions and clarification on existing rules. There is no budgetary impact to the state for the administrative processing or enforcement of this rule.

B) Local governments:

This proposed rule amendment is a clarification of existing rules and will not impact any local governments in their adherence or enforcement of this rule. There is no anticipated cost or savings associated with this rule change.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed rule amendment is a clarification of existing rules, and therefore, should have no financial impact to any small businesses while adhering to the rule changes as written. There is no reasonable estimation of cost to businesses of any type.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This proposed rule amendment is a clarification of existing rules, and therefore, should have no financial impact to any businesses while adhering to the rule changes as written. There is no reasonable estimation of cost to businesses of any type.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed rule amendment is a clarification of existing rules, and therefore, should have no financial impact to any party while adhering to the rule changes as written. There is no anticipated cost or savings associated with this rule change.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no associated costs for affected persons as outlined in the definitions rule proposed.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There will not be any fiscal impact as a result of these changes. Brian Steed, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 79-4-203	Section 41-22-10	Section 79-4-304
Section 79-4-604		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	**Date:**	06/21/2022

R651. Natural Resources, State Parks[~~ and Recreation~~].
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.

"Division" means the Division of State Parks[~~ and Recreation~~], Department of Natural Resources.

R651-601-2. Ranger.

"Ranger" means any employee of the Division who is designated by the Director or [~~his~~]their designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.

"Division Representative" means any employee of the Division authorized by the Director or [~~his~~]their designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.

"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic, and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art, and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.

"Park system" means all natural and cultural resources, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.

"Park area" means any individual park property in the park system.

R651-601-7. Manager.

"Manager" means the Division representative in charge of a park area.

R651-601-8. Permits and Permission.

(1) "Permit" means written authorization by a park representative.

(2) "Special Use Permit" means written permission given to an individual, partnership, corporation, or other recognized organization to conduct the following:

(a) special events whether commercial or non-commercial;

(b) certain limited concession activities; and

(c) commercial services as guides, provisioners, or outfitters.

(3) "Permission" means oral or written authorization by a park representative.

[~~**R651-601-9. Permit.**~~

~~"Permit" means written authorization by a park representative.~~]

R651-601-[~~10~~]9. Posted.

"Posted" means law and rule notices that are placed physically in prominent locations or are listed on official [~~s~~]State [~~p~~]Park documents, receipts, permits, or websites.

R651-601-[~~11~~]10. Person.

"Person" means an individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-[~~12~~]11. Commercial Activity.

"Commercial Activity" means any activity, private or otherwise, that is for [~~the purpose of~~]commercial gain, or that is part of any scheme or plan established for [~~the purpose of~~]obtaining commercial gain. This includes[~~, but is not limited to~~]:

(1) sales of goods or merchandise.

(2) rentals of equipment.

(3) collection of entrance or admission fees.

(4) collection of storage or use fees.

(5) sales of services.

(6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-[~~13~~]12. Commercial Gain.

"Commercial gain" means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-[~~14~~]13. Concession Contract.

"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, [~~for the purpose of providing~~]to provide services or sales of goods or merchandise for conducting commercial activity.

[~~**R651-601-15. Special Use Permit.**~~

~~"Special Use Permit" means written permission given to an individual, partnership, corporation, or other recognized organization for the purpose of conducting the following: 1) special events whether commercial or non-commercial; 2) certain limited concession activities; and 3) commercial services as guides, provisioners, and/or outfitters.~~]

R651-601-[~~16~~]14. Cooperative Agreement.

A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-[~~17~~]15. [~~Definitions~~]Motorized Transportation Device.

[~~(1)~~]"Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles,"[~~,~~] "Mopeds,"[~~,~~] "Motor Assisted scooters,"[~~,~~] "motorcycles,"[~~,~~] "motor-driven cycle,"[~~,~~] and "personal motorized mobility device" as defined in [~~Utah State Code~~]Section 41-6-1. "Motorized wheelchairs" are also included under this definition.

R651-601-[~~18~~]16. Unmanned Aircraft.

[~~(1)~~]"Unmanned Aircraft" means an aircraft that is capable of sustaining flight and that operates with no possible direct human intervention from, on or within the aircraft.

R651-601-[~~19~~]17. Dangerous Weapon.

[~~(1)~~]"Dangerous Weapon" means the same as defined in Subsection 76-10-501(6) and includes archery equipment on State Park owned and managed property.

R651-601-[~~20~~]18. Primary Jurisdiction Zone (PJZ).

[~~(1)~~]"Primary Jurisdiction Zone" means those areas of the Federal Estate surrounding the dams, including the dams, appurtenant facilities, and the vicinities below the dams wherein Reclamation retains primary jurisdiction.

R651-601-19. Special Uses.

"Special Uses" include a special assembly, exhibit, speech, public demonstration, the sale, posting or distribution of printed material, soliciting of any type, any special activity or use, or any activity or use for which a special use permit is required.

KEY: parks, off-highway vehicles
Date of Last Change: 2022[~~January 5, 2021~~]
Notice of Continuation: June 13, 2018
Authorizing, and Implemented or Interpreted Law: 41-22-10; 79-4-203; 79-4-304; 79-4-601; 76-10-501

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R651-603**	**Filing ID 54707**

Agency Information

1. Department:	Natural Resources	
Agency:	State Parks	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 295	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R651-603. Animals

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The purpose of this amendment is to provide expanded use for pet-owners while still allowing for the enforcement of pet supervision, waste disposal, and physical controls such as leashes or cages.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The rule change outlined allows expanded animal visitation at all state parks, and outlines exclusions from park concessionaires and food service areas.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendment should not have any cost to the state associated with the implementation because the change allows owners more accessibility in the park with their pets with no additional fee.

B) Local governments:

This proposed rule amendment should not impact any local governments as it only describes enforcement and prohibitions as they pertain to state park operated lands.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This proposed rule amendment is intended to increase the ability of pet-owners to travel with their pets, and therefore, should not have any impact to small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This proposed rule amendment is intended to impact pet-owners and therefore, should have no financial impact to any businesses in the course of adhering to the rule changes as written.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This proposed rule amendment expands pet use for visitors and should not financially impact any entity.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no associated costs for affected persons as outlined in the animals rule proposed.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule does not appear to fiscally impact businesses. Brian Steed, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 79-4-501	Section 79-4-304	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	**Date:**	06/21/2022

R651. Natural Resources, State Parks[~~ and Recreation~~].
R651-603. Animals.
R651-603-1. Pets.

(1) [~~All pets~~]Pets are prohibited in park areas unless caged, or physically controlled on a six[-]-foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of [~~all~~]fecal matter deposited by their pets[~~/~~] or animals within the park area.

R651-603-2. Animal Exclusions.

[~~All animals~~]Animals are prohibited from public buildings, [~~bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system,~~]and park or concession operated food service and dining areas, except for guide or service dogs as authorized by Section 62A-5b-104.

[~~**R651-603-3. Unattended Animal.**~~

~~Leaving any animal unattended is prohibited except by permit.~~]

R651-603-[~~4~~]3. Dangerous Animals.

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

R651-603-[~~5~~]4. Wildlife.

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities, [~~(~~]see Rule R651-614[~~)~~].

R651-603-[~~6~~]5. Hitching or Tying Animals.

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

R651-603-[~~7~~]6. Horse Use on Trails.

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

R651-603-[~~8~~]7. Horse Use Within a Park.

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

KEY: parks
Date of Last Change: 2022[~~July 25, 2017~~]
Notice of Continuation: June 7, 2018
Authorizing, and Implemented or Interpreted Law: 79-4-304; 79-4-501

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R651-606**	**Filing ID 54734**

Agency Information

1. Department:	Natural Resources	
Agency:	State Parks	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146001	
City, state and zip:	Salt Lake City, UT 84114-6001	
Contact person(s):		
Name:	**Phone:**	**Email:**
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R651-606. Camping

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

For several years, the Division of Park and Recreation (Division) rules for camping in our parks has been in need of updates.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The Division is offering much more than just traditional camping in state parks and the rules need to change to reflect changes in offerings and operations. This rule adds the terminology of Overnight Facilities and Park Lodging to the language to incorporate cabins, yurts, tents, tiny homes, and other accommodations the Division offers. Part of this rule update is to eliminate Section R651-606-4 because paying prior to camping is covered in another rule. Section R651-606-2 change gives flexibility to the park to raise or lower the number of persons the lodging will accommodate per site, rather than having a statewide inflexible rule that doesn't fit each situation. This rule makes it clear that amenities associated with camping and lodging such as showers, garbage receptacles, water, and electric hookups are only to be used by those camping or lodging in the park. Section R651-606-8 is outdated and needs to be changed for Coral Pink that extended the quiet hours by two hours from the standard park is being eliminated.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendment will have no budgetary impact to the state for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

B) Local governments:

The proposed rule amendment will have no budgetary impact to the local governments for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

The proposed rule amendment will have no budgetary impact to small businesses for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

The proposed rule amendment will have no budgetary impact to non-small businesses for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

The proposed rule amendment will have no budgetary impact to persons other than small businesses, non-small businesses, state of local government entities for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no associated costs for affected persons as outlined in this proposed rule for administrative processing

or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There will not be any fiscal impact as a result of these changes. Brian Steed, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 79-4-501

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	**Date:**	06/21/2022

R651. Natural Resources, State Parks[~~ and Recreation~~].
R651-606. Camping, Overnight Facilities, and Park Lodging.
[~~R651-606-1. Permit Required for Camping in Undeveloped Areas.~~
~~No person shall camp in undeveloped locations of a park area without proper permit.~~]

R651-606-[~~2~~]1. Campsite Overnight Facility and Park Lodging Unit Occupancy.

(1)[~~a.~~] No person shall occupy or otherwise use a campsite, overnight facility, or park lodging unit when it is occupied or reserved for another person.

(2)[~~b.~~] If a reserved campsite, overnight facility, or park lodging unit is not occupied within 24 hours of the reservation date check-in time, park management may reassign the campsite, overnight facility, or park lodging unit to another individual.

R651-606-[~~3~~]2. Maximum Occupancy of Campsites, Overnight Facilities, and Park Lodging.

Unless authorized by a park representative, individual campsites Overnight Facilities, and Park Lodging shall not be occupied by more than [~~two~~]the posted number of vehicles and[~~eight~~] persons.

[~~R651-606-4. Payment Required Before Occupancy of Campsite.~~
~~No person shall occupy camping facilities prior to payment of required fees.~~]

R651-606-[~~5~~]3. Time-Limit in Campsite, Overnight Facilities, and Park Lodging May Not Be Exceeded.

[~~Camping is~~]Overnight stays are limited to 14 consecutive days at [~~all campgrounds~~]each location except for designated long-term [~~campsites~~]accommodations where a long-term [~~camping~~]agreement has been signed by the occupant and the park manager.

R651-606-[~~6~~]4. Use [~~of Showers~~]Camping, Overnight Facility, and Park Lodging Amenities.

Amenities associated with camping, overnight facilities, and park lodging such as [~~S~~]showers, water spigots, electrical hookups, garbage receptacles, and sewage dump stations may only be used by [~~campers~~]individuals with camping, overnight facilities, or park lodging permits or [~~shower authorization permits~~]other form of permission and only in accordance with posted restrictions.

R651-606-[~~7~~]5. Camping Only in Designated Areas.

[~~All~~]Each person[~~s~~] shall park or camp only in areas designated for those purposes.

R651-606-[~~8~~]6. Campsite, Overnight Facility, and Park Lodging Unit Occupancy. Check-out and Check-in [~~t~~]Times.

Unless approved by park management, no person shall occupy a campsite, overnight facility or park lodging unit:

a. After the posted check-out time; or

b. [~~Prior to~~]Before the posted check-in time

R651-606-[~~9~~]7. Clean-up of Campsite, Overnight Facility, and Park Lodging Required.

[~~All~~]Each person[~~s~~] shall remove all personal property, debris, and litter and clean the location as required in the camping, overnight facility, or park lodging permit [~~prior to~~]before departing the site.

R651-606-[~~10~~]8. Quiet Hours.

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10[~~:00~~] p.m. to 7[~~:00~~] a.m.[~~, except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.~~]

KEY: parks
Date of Last Change: 2022[~~January 5, 2021~~]
Notice of Continuation: June 7, 2018
Authorizing, and Implemented or Interpreted Law: 79-4-501

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R651-612**	**Filing ID 54678**

Agency Information

1. Department:	Natural Resources
Agency:	Parks and Recreation
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 295
City, state and zip:	Salt Lake City, UT 84114
Contact person(s):	

Name:	**Phone:**	**Email:**
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R651-612. Veteran's with Disabilities Honor Pass

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

During the 2022 General Session, H.B. 155 was passed that changed the qualification criteria for the Honor Pass. The new law took effect on 05/04/2022.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The Honors Pass disability criteria change approved in H.B. 155 (2022), requires the Division of State Parks (Division) to change the rule regarding the honors pass. The Division is currently following the direction given in H.B. 155 and has designed and ordered a supply of new card style passes. Old version of the Honors Pass will still be valid through the end of 2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

H.B. 155 (2022) appropriated $350,000 to State Parks to cover the cost of this expanded program; however, this rule change does not cost or save the state budget any funding.

B) Local governments:

This rule further clarifies H.B. 155 (2022) which expands a free program to individuals, so there is no effect on local governments.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This rule further clarifies H.B. 155 (2022) which expands a free program to individuals, so there is no effect on small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This rule further clarifies H.B. 155 (2022) which expands a free program to individuals, so there is no effect on non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule expands a free program to disabled veterans, so there will be increased availability of free access to state parks by disabled veterans.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

This is a free program, so there will be no increased compliance costs for effected persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

No expected impact on business. Brian Steed, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 79-4-304(3)(b)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 08/15/2022

10. This rule change MAY become effective on: 08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	**Date:**	06/10/2022

R651. Natural Resources, State Parks[~~ and Recreation~~].
R651-612. Veteran's with Disabilities Honor Pass.
R651-612-1. Authority and Effective Date.

(1) [~~These~~]This rule[~~s~~] [~~are~~]is established as required by Section 79-4-304 as amended by HB155S01[~~HB135S01~~] as passed during the [~~2016~~]2022 General Session of the Utah Legislature.

(2) This rule governs the issuance of the 'Veteran's with Disabilities Honor Pass', hereafter referred to as 'Honor Pass' and is effective [~~July 1, 2016~~]May 4, 2022.

R651-612-2. Definitions.

(1) 'Qualified Veteran' means an honorably discharged veteran who is:

(a) A resident [~~of the State~~]of Utah; and

(b) Has [~~at least a 50%~~]a current service-connected [~~service related~~]disability rating issued by the United States Veterans Benefits Administration[~~as evidenced by documentation from:~~].

[~~(i) The United States Department of Veterans Affairs;~~

~~(ii) An active component of the United States armed forces; or~~

~~(iii) A reserve component of the United States armed forces.~~]

(2) 'Veterans with Disabilities Honor Pass' or 'Honor Pass' means an annual pass issued in accordance with this rule.

R651-612-3. Honor Pass Application Process.

(1) A qualified veteran meeting the criteria established in Section R651-612-2 shall be issued an Honor Pass when documentation of a service related disability as described in Subsection R651-612-2(1) is presented and verified at a location listed in Section R651-612-5.

(2) The Honor Pass shall be provided free of charge to a qualified veteran.

(3) The Honor Pass is valid only when in the possession of the qualified veteran to whom it was issued, and is nontransferable.

(4) The Honor Pass shall be valid for the entire calendar year for which it was issued.

R651-612-4. Honor Pass Limitations.

(1) Except as specified below, the Honor Pass shall be valid for day use admittance to all state parks for the qualified veteran and up to [~~7~~]seven guests traveling in the same private vehicle.

(2) The Honor Pass is not valid at This Is The Place Heritage Park; and does not cover fees charged by Davis County for travel on the Antelope Island Causeway. The Honor Pass is not valid for special charges or fees within the park including[~~ (i.e.~~], Jordan River Off-Highway Vehicle State Park rider fees, golf green fees, special program participation fees, camping, [~~etc.)~~]or special events, sponsored activities, or concession services.

R651-612-5. Honor Pass Distribution.

(1) Locations of Honor Pass distribution sites will be posted on the Division's website. Electronic application and mail in application options will be pursued.

(2) The Division shall work with veteran service organizations to make passes available at other convenient locations.

KEY: park pass, veterans
Date of Last Change: 2022[~~July 28, 2016~~]
Notice of Continuation: July 7, 2021
Authorizing, and Implemented or Interpreted Law: 79-4-304

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R651-633**	**Filing ID 54729**

Agency Information

1. Department:	Natural Resources
Agency:	State Parks
Street address:	1594 W North Temple, Suite 116
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146001
City, state and zip:	Salt Lake City, Utah 84114-6001

Contact person(s):		
Name:	**Phone:**	**Email:**
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R651-633. Special Closures or Restrictions

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

For a number of years, the Division of State Parks (Division) rules for pets and other animals in state parks has been in need of updates.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

The trends in recreation and hospitality businesses are that there has been increases in visitors wanting to take their pets with them on vacation, as well as day trips. The Division wants to be able to provide opportunities for these visitors with pets that many national and other park systems do not allow. These rule changes create a friendlier park system to those who want to recreate with their pets.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendment will have no budgetary impact to the state for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

B) Local governments:

The proposed rule amendment will have no budgetary impact to the local governments for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

The proposed rule amendment will have no budgetary impact to small businesses for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

The proposed rule amendment will have no budgetary impact to non-small businesses for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

The proposed rule amendment will have no budgetary impact to persons other than small businesses, non-small businesses, state, or local government entities for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no associated costs for affected persons as outlined in this proposed rule for administrative processing or enforcement of this rule. There is no reasonable estimation of cost to businesses of any type.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There will not be any fiscal impacts as a result of these changes. Brian Steed, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 79-4-203	Section 79-4-304	Section 79-4-501

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	**Date:**	06/21/2022

R651. Natural Resources, State Parks[~~ and Recreation~~].
R651-633. Special Closures or Restrictions.
R651-633-1. Emergency Closures or Restrictions.

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager, with the approval of the region manager, to protect public safety or park resources during a temporary emergency situation.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park:

(a) Hang gliding, para gliding, and B.A.S.E. jumping is prohibited[~~;~~].

(b) Dogs on the Interpid Mountain Bike Trail System are prohibited[~~;~~].[~~ and~~]

(c) Bicycling on [~~all~~]Rim Hiking Trails is prohibited unless posted open[~~;~~].

[~~(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 62A-5b-104;~~

~~(4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 62A-5b-104;~~]

[~~(5)~~](3) Snow Canyon State Park[~~–~~]:

(a) [~~All h~~]Hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area.[~~,~~]

(b) The last half-mile of the Johnson Canyon Trail is closed annually from March 15 through September 14 except by permit or guided walk; this portion of trail is open from September 15 through March 14.

(c) Black Rocks Canyon is closed annually from March 15 to June 30.[~~,~~]

(d) West Canyon climbing routes are closed annually from February 1 to June 1.

[~~(e) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 62A-5b-104.~~]

[~~(f)~~](e) Hang gliding, para gliding, and B.A.S.E. jumping is prohibited.

KEY: parks
Date of Last Change: 2022[~~January 15, 2020~~]
Notice of Continuation: June 28, 2018
Authorizing, and Implemented or Interpreted Law: 79-4-203; 79-4-304; 79-4-501

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	**R907-1**	**Filing ID 54704**

Agency Information

1. Department:	Transportation	
Agency:	Administration	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R907-1. Administrative Procedures

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The Department of Transportation (Department) has not made substantive changes to this rule since 2013. However, the Department proposes changes to this rule to accomplish the following things:

First, update this rule to clarify that the Department and the public's procedures to determine if an adjudicative hearing is needed.

Second, add a process for the Department to hire Administrative Law Judges (ALJs) to officiate certain adjudicative hearings.

Third, add a method for the Department to procure third-party specialists such as stenographers to record and transcribe certain adjudicative hearings.

Fourth, eliminate text inconsistent with the Utah Rulewriting Manual.

Fifth, eliminate text that unnecessarily burdens an individual or entity.

Sixth, to comply with amendments to Section 57-12-9 by S.B. 235, passed during the 2022 General Session.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

A. The Department proposes the following changes to this rule:

1) Add a section stating the Department's legal authority to make the rule and its purpose.

2) Change the phrase "hearing Officer" to "presiding Officer."

3) Make numerous grammatical corrections to make the rule consistent with the Utah Rulewriting Manual.

4) Partially rewrite the section on Commencement By a Member of the Public to clarify the procedure.

5) Rewrite the section on Agency Review Procedures to clarify procedures.

6) Add a section called Procedures for Informal Adjudicative Proceedings that concisely states requirements for informal proceedings.

7) Remove the section governing "emergency orders."

8) Add language to ensure compliance with amendments to Section 57-12-9 passed during the 2022 General Session.

B. Certain sections that apply to informal adjudicative proceedings change to require the appointment of an ALJ. The Executive Director or a Deputy Director will appoint an ALJ at the Department's expense for informal adjudicative hearings involving relocation or other complex state or federal law issues. For matters officiated by an ALJ, the Department will hire a stenographer to record and transcribe the hearing.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed changes will increase the state's costs to pay presiding Officers from outside the Department, such as ALJs, and stenographers such as court reporters for certain informal and formal hearings. The Department could hold approximately one informal hearing per year to which this change will apply. The average hearing lasts four hours. The cost of recording and transcribing a four-hour hearing could be $600; the annual cost to the state could be $600 for stenography.

Hiring a presiding Officer from outside the Department, such as an ALJ, may cost $200 per hour for 14-hours. For example, an ALJ will charge for the 4-hour hearing plus another 10 hours to draft the Decision and Final Order. Thus, the total cost could be $2,800 for the ALJ's services per hearing. Therefore, the Department estimates the proposed changes may cost the state's budget $3,400 annually for ALJs and stenographers.

B) Local governments:

The Department does not anticipate that these proposed changes will cost local governments anything because this rule does not apply.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

The proposed changes to this rule will not affect the budgets of small businesses involved in the Department's agency actions. The proposed changes have the Department covering all new costs.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

None--The rule change requires the Department to pay all new costs.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

None--The rule change requires the Department to pay all new costs.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

The proposed changes will not cost affected persons anything. The Department will pay all new costs.

G) Comments by the Department head on the fiscal impact this rule may have on businesses (Include the name and title of the Department head):

This proposed rule change does not require any business to pay for anything. Carlos M. Braceras, P.E. Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$3,400	$3,400	$3,400
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$3,400**	**$3,400**	**$3,400**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**($3,400)**	**($3,400)**	**($3,400)**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, P.E., has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 72-1-201(h)	Subsection 63G-4-102(6)	Subsection 63G-4-203(1)
Subsection 63G-3-201(2)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/24/2022

R907. Transportation, Administration.
[~~R907-1. Administrative Procedures.~~
~~R907-1-1. General Provisions.~~

~~All applications, Requests for Agency Action, Notices of Agency Action, and requests for review shall be processed as informal adjudicative proceedings pursuant to Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal or either party requests conversion to a formal proceeding and the presiding officer decides that conversion is in the public interest and does not prejudice the rights of any party. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the presiding officer from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review pursuant to Section 63G-4-301, only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA). When used in these rules, "director" means Presiding Officer except when used as Executive Director.~~

~~R907-1-2. Commencement by Department -- Notice of Agency Action -- Procedures.~~

~~(1) An adjudicative proceeding commenced by the department is initiated by a Notice of Agency Action, which the department shall mail or personally deliver to the person or persons against whom the action is proposed to be taken (respondents). UDOT shall publish the Notice of Agency Action if required by statute, any other rule, or the Utah Transportation Commission.~~

~~(2) A Notice of Agency Action shall include the following information:~~

~~(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;~~

~~(b) the department's file number or other reference number;~~

~~(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;~~

~~(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;~~

~~(e) a statement that, if the person requests an appeal of the agency action, the adjudicative proceeding will be conducted informally pursuant to these rules unless either the department or the respondent requests conversion to a formal adjudicative proceeding and the appropriate presiding officer identified in R907-1-3(2) grants the request;~~

~~(f) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;~~

~~(g) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;~~

~~(h) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;~~

~~(i) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount; and~~

~~(j) a statement that the respondent is entitled to agency review if he or she files a Request for Agency Review with the initiating division or office within 30 days from the date the Notice is deposited in U.S. Mail or personally served.~~

~~(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.~~

~~(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.~~

~~(5) A defaulting party may seek agency review of an Order of Default by sending a written request for review to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.~~

~~R907-1-3. Commencement By a Member of the Public -- Complete or Partial Denials of Applications or Requests for Agency Action -- Default.~~

~~(1) If the department denies, either completely or in part, an application or Request for Agency Action and that action is subject to agency review, the division or office issuing the denial shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. In addition, the reply shall inform the applicant that his written request for review must include any supporting documentation, including legal memoranda, that he or she wishes to be considered. The reply shall constitute the proposed order of the division or office making the decision and shall so indicate on the reply. If there is no appeal within 30 days, it shall become the final order of the department.~~

~~(2) Upon receiving a Request for Agency Review, the division or office shall first evaluate it to determine whether it meets the requirements of Section 63G-4-301(1), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:~~

~~(a) the Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;~~

~~(b) the Deputy Director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;~~

~~(c) the Project Development Director or designee, if the matter relates to:~~

~~(i) construction contract disputes; or~~

~~(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;~~

~~(d) the Region Director, if the action involves something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;~~

~~(e) the Executive Director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by department personnel located at department headquarters at the Calvin Rampton Complex.~~

~~(3) The positions listed above shall be the respective presiding officers. However, either the Executive Director or Deputy Director may designate another to act as a substitute. Additionally, when called to preside over adjudicative proceeding that involves access management or has potential "takings" or inverse condemnation implications, the Region Director may designate a group of individuals either to advise on the issue or to take over presiding officer duties. If the Region Director designates a group to take over presiding officer duties, he or she shall appoint:~~

~~(a) an odd-numbered group so that any decision will not result in a tie; and~~

~~(b) a chairperson.~~

~~(4) The person who issued the agency order to be reviewed may not be included in either of the groups established in paragraph (3). However, the person who issued the decision may be consulted, asked for the reasons underlying his decision, and called as a witness if the proceeding is converted to a formal one.~~

~~(5) Absent filing of a timely Request for Agency Review, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.~~

~~(6) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail~~

~~the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.~~

~~(7) A defaulting party may seek agency review of an Order of Default by sending a request for agency review to the presiding officer. If the Order of Default was issued by that officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.~~

~~R907-1-4. Agency Review -- Procedures.~~

~~(1) Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.~~

~~(2)Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the person required to decide on review may meet with the parties, if he or she considers it necessary. This meeting is not a hearing as contemplated under Title 63G, Chapter 4 Utah Administrative Procedures Act.~~

~~(3)The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:~~

~~(a) a designation of the statute or rule permitting or requiring review;~~

~~(b) a statement of the issues reviewed;~~

~~(c) findings as fact as to each of the issues;~~

~~(d) conclusions of law as to each of the issues;~~

~~(e) the reasons for the disposition;~~

~~(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and~~

~~(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.~~

~~R907-1-5. Reconsideration.~~

~~(1) Within 20 days after issuance of the final order, any party may request reconsideration, stating the specific grounds upon which relief is requested.~~

~~(2) The person filing the request shall mail a copy to each party.~~

~~(3) The Executive Director, or his designee, shall issue a written order either denying or granting the request. If no order is issued within 20 days, the request shall be considered denied. If the request is granted in any part and a new final order is issued, it shall include the same information listed in R907-1-4, or R907-1-6 if the matter concerned motor carriers.~~

~~R907-1-6. Administrative Procedures for Motor Carrier Actions.~~

~~(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under Section 63G-4-402, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence. The department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.~~

~~(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the department's Executive Director may act as the administrative hearing officer. At the hearing, the motor carrier shall go first and is burdened to show why the department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statements or arguments and he may tape the proceedings. The rules of evidence do not apply.~~

~~(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:~~

~~(a) a designation of the statute or rule permitting or requiring review;~~

~~(b) a statement of the issues reviewed;~~

~~(c) findings as fact as to each of the issues;~~

~~(d) conclusions of law as to each of the issues;~~

~~(e) the reasons for the disposition;~~

~~(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and~~

~~(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.~~

~~R907-1-7. Formal Process and Hearing: Initiation.~~

~~(1) If, notwithstanding R907-1-1, the department wishes to initiate an adjudicative proceeding as a formal proceeding, the formal hearing process shall be conducted as follows:~~

~~(2) A Notice of Agency Action shall include the following information:~~

~~(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;~~

~~(b) the department's file number or other reference number;~~

~~(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;~~

~~(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;~~

~~(e) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;~~

~~(f) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;~~

~~(g) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;~~

~~(h) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;~~

~~(i) a statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections 63G-4-204 to 63G-4-209;~~

~~(j) a statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action; and~~

~~(k) a statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default.~~

~~(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party~~

~~is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature and the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.~~

~~(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.~~

~~(5) A defaulting party may seek agency review of an Order of Default by sending a written request to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.~~

~~R907-1-8. Formal Process and Hearing: Responses.~~

~~(1) In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:~~

~~(a) UDOT's file number or other reference number;~~

~~(b) the name of the adjudicative proceeding;~~

~~(c) a statement of the relief that the respondent seeks;~~

~~(d) a statement of the facts; and~~

~~(e) a statement summarizing the reasons that the relief requested should be granted.~~

~~(2) The response shall be filed with UDOT and one copy shall be sent by mail to each party.~~

~~(3) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.~~

~~(4) In the discretion of the Presiding Officer Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.~~

~~R907-1-9. Formal Process and Hearing: Intervention.~~

~~(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the presiding officer granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-8 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the presiding officer only upon separate motion of the intervenor made at or before the hearing for good cause shown.~~

~~(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the presiding officer.~~

~~(3) Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.~~

~~(4) Granting of Petition. The presiding officer shall grant a petition for intervention if he or she determines that:~~

~~(a) The petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and~~

~~(b) The interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.~~

~~(5) Order Requirements.~~

~~(a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.~~

~~(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.~~

~~(c) The presiding officer may impose conditions at any time after the intervention.~~

~~(d) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation therein, the presiding officer may dismiss the intervenors from the proceeding.~~

~~(e) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.~~

~~R907-1-10. Formal Process and Hearing: Conduct of Hearings.~~

~~All hearings before the Presiding Officer Director shall be governed by the following procedures:~~

~~(1) Public Hearings. All hearings shall be open to the public, unless otherwise ordered by the Presiding Officer Director for good cause shown. All hearings shall be open to all parties~~

~~(2) Full Disclosure. The Presiding Officer Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.~~

~~(3) Rules of Evidence. The Director shall use as appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:~~

~~(a) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;~~

~~(b) shall exclude evidence privileged in the courts of Utah;~~

~~(c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document; and~~

~~(d) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record or other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.~~

~~(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.~~

~~(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.~~

~~(6) Public Participation. The Director may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.~~

~~(7) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.~~

~~(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with this rule.~~

~~(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.~~

~~(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.~~

~~(11) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the Director may, at his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the Director.~~

~~(12) Record of Hearing. The Director shall cause an official record of the hearing to be made, at the agency's expense.~~

~~(a) The record may be made by means of a certified shorthand reporter employed by the Director or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Director chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Director. Parties desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.~~

~~(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use, but may not be taken out of the office. If the party agrees to pay the costs, the department will make a copy to give to them.~~

~~(13) Preserving Integrity. This section does not preclude the Director from taking appropriate measures necessary to preserve the integrity of the hearing.~~

~~(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.~~

~~(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.~~

~~(b) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the Director may authorize such manner of discovery against another party or person, including the UDOT staff, as may be prescribed by and in the manner provided by the Utah Rules of Civil Procedure.~~

~~(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.~~

~~R907-1-11. Formal Process and Hearing: Decisions and Orders.~~

~~(1) Decision. The Director shall sign and issue an order that includes:~~

~~(a) a statement of the Director's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;~~

~~(b) a statement of the reasons for the Director's decision;~~

~~(c) a statement of any relief ordered;~~

~~(d) a notice of the right to apply for reconsideration;~~

~~(e) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and~~

~~(f) The time limits applicable to any reconsideration or review.~~

~~(2) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.~~

~~(3) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.~~

~~(4) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.~~

~~(5) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.~~

~~(6) Interim Orders. This section does not preclude the Director from issuing interim orders to:~~

~~(a) notify the parties of further hearings;~~

~~(b) notify the parties of provisional rulings on a portion of the issues presented; or~~

~~(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.~~

~~(7) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.~~

~~R907-1-12. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.~~

~~(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration or rehearing, stating the specific grounds upon which relief is requested.~~

~~(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.~~

~~(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail to each party by the person making the request.~~

~~(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.~~

~~(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.~~

~~(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.~~

~~(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of this rule. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.~~

~~R907-1-13. Declaratory Rulings.~~

~~(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.~~

~~(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:~~

~~(a) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or~~

~~(b) there would be substantial prejudice to the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding.~~

~~(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9.~~

~~(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:~~

~~(a) declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or~~

~~(b) decline to issue a declaratory order and state the reasons for its action.~~

~~(5) Contents of Order. A declaratory order shall contain:~~

~~(a) the names of all parties to the proceeding on which it is based;~~

~~(b) the particular facts on which it is based; and~~

~~(c) the reasons for its conclusion.~~

~~(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.~~

~~(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.~~

~~(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.~~

~~R907-1-14. Emergency Orders.~~

~~Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.~~

~~(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:~~

~~(a) the facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and~~

~~(b) the threat requires immediate action by the Director of Commission member.~~

~~(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:~~

~~(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;~~

~~(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative proceedings;~~

~~(c) give immediate notice to the persons who are required to comply with the order; and~~

~~(d) if the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.~~

~~R907-1-15. Exhaustion of Administrative Remedies.~~

~~(1) Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, prior to seeking judicial review.~~

~~(2) In any adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.~~

~~R907-1-16. Deadline for Judicial Review.~~

~~A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63G, Chapter 4.~~

~~**R907-1-17. Judicial Review of Formal Adjudicative Proceedings.**~~

~~Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63G-4-403.~~

~~**R907-1-18. Civil Enforcement.**~~

~~(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts.~~

~~(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.~~

~~(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.~~

~~(c) The action may request, and the court may grant, any of the following:~~

~~(i) declaratory relief;~~

~~(ii) temporary or permanent injunctive relief;~~

~~(iii) any other civil remedy provided by law; or~~

~~(iv) any combination of the foregoing.~~

~~(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:~~

~~(a) until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;~~

~~(b) if the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or~~

~~(c) if a petition for judicial review of the same order has been filed and is pending in court.~~

~~**R907-1-19. Waivers.**~~

~~Notwithstanding any other provision of this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT. This waiver provision may not be construed to prohibit a finding of default as defined in this rule.~~

~~**R907-1-20. Construction.**~~

~~The Utah Administrative Procedures Act described in Title 63G, Chapter 4 or any other federal, state statute, or federal regulation shall supersede any conflicting provision of this rule. It is the department's intent that, where possible, the provisions of this rule be construed to be in compliance with those superseding provisions.~~]

R907-1. Agency Actions, Administrative Procedures.

R907-1-1. Authority and Purpose.

(1) Authority. Subsection 72-1-201(h) grants the Department authority to make rules for the administration of the Department, state transportation systems, and programs. In addition, Subsection 63G-3-201(2) of the Administrative Rulemaking Act and Subsections 63G-4-102(6) and 63G-4-203(1) of the Administrative Procedures Act (UAPA) authorizes agencies to make rules governing adjudicative proceedings. Finally, Section 57-12-9 grants the Department authority to make rules relating to financial assistance claims under the Utah Relocation Assistance Act, Title 57, Chapter 12 or 42 U.S.C Sections 4601-4655.

(2) Purpose. This rule creates procedures the Department follows to initiate, conduct, and review agency actions.

R907-1-2. General Provisions.

(1) The Department will process every application, Request for Agency Action, Notice of Agency Action, and review request as an informal adjudicative proceeding according to Sections 63G-4-202 and 63G-4-203 of UAPA unless another rule specifically designates a proceeding as formal. Any party may ask the Presiding Officer to convert the proceeding to a formal adjudicative proceeding. The Presiding Officer may convert the proceeding to a formal proceeding if it is in the public interest and does not prejudice a party's rights.

(2) The Presiding Officer will only conduct an evidentiary hearing as part of a formal proceeding. However, the Presiding Officer may conduct a meeting of the parties to discuss settlement, clarify issues, hear oral argument, or review evidence. Adjudicative proceedings are only subject to agency review under Section 63G-4-301 or when a statute or rule explicitly provides for review.

(3) This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA).

R907-1-3. Appointment of the Presiding Officer and Hearing Record.

(1) The Executive Director or a deputy director will appoint a Presiding Officer to oversee an informal hearing as follows:

(a) the Director of Operations, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the Deputy Director of Engineering and Operations or a designee if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Director of Project Development or a designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsection (a), (b), or (c), and this rule or a statute does not specify a specific appellate procedure;

(2) The Presiding Officer will record a hearing from beginning to end.

(3) The Executive Director will appoint an Administrative Law Judge (ALJ) to act as a Presiding Officer over challenges to decisions related to relocation assistance valued more than $50,000 under Title 57, Chapter 12, Utah Relocation Assistance Act or the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4601-4655.

(a) If the Executive Director appoints an ALJ, the Executive Director will hire a stenographer to record and transcribe the hearing.

(b) The Executive Director will procure the services and pay the costs of the ALJ and stenographer.

R907-1-4. Commencement by Department -- Notice of Agency Action -- Procedures.

(1) The Department will begin an adjudicative proceeding by issuing a Notice of Agency Action. The Department will deliver a Notice of Agency Action to the person or persons against whom it

is taking action. In addition, the Department will publish the Notice of Agency Action if required by a statute or rule.

(2) A Notice of Agency Action will include the following information:

(a) the names and mailing or email addresses of the Respondents and other persons to whom the Department serves the notice;

(b) the Department's file number or another reference number;

(c) a name or caption of the adjudicative proceeding, for example, Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Department delivered the Notice of Agency Action to the Respondents;

(e) a statement that, if the person requests an appeal of the agency action, the Department will conduct the adjudicative proceeding informally according to this rule unless either the Department or the Respondent requests the proceedings converted to a formal proceeding and the Presiding Officer grants the request;

(f) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(g) the name, title, mailing and email address, and telephone number of the office initiating the Notice of Agency Action and the Presiding Officer;

(h) the purpose for the adjudicative proceeding and, to the extent known, the questions the Presiding Officer will review;

(i) the amount of the fine or penalty the Department proposes to assess, and a summary of the evidence supporting the proposed amount; and

(j) a statement that the Respondent is entitled to agency review if they file a Request for Agency Review with the Department within 30 days from the date the Department delivers the Notice of Agency Action.

(3) A Respondent should file a written response to the Notice of Agency Action.

(a) Should a Respondent fail to file a written response to the Notice of Agency Action, the Department will order stating the Respondent is in default.

(b) If a defaulting Respondent is the only Respondent, the Notice of Agency Action will become the Department's Final Order. Accordingly, the initiating division, or Presiding Officer will revise the Notice of Agency Action to effect this change, captioning the notice as the Final Order and affixing the proper signature and the new date.

(4) The Department may not make substantive changes to the Final Order. However, the Final Order must include a provision that notifies the Respondent of the right to judicial review. The Department must then deliver a copy of the Default Order and the Final Order to the Respondent in default.

(5) If the defaulting party is not the sole Respondent, the initiating division, office, or the Presiding Officer will mail the Default Order to every party. The adjudicative proceeding may continue, and the Department may determine the issues in the proceeding, including those affecting the defaulting party.

(6) A defaulting party may seek agency review of a Default Order by sending a written request for review to the Presiding Officer. If the Presiding Officer issued the Default Order, the defaulting party must seek reconsideration of the Default Order according to Section R907-1-8.

(7) The only issue the Presiding Officer may consider in a Request for Reconsideration is whether entering default was appropriate.

R907-1-5. Commencement By a Member of the Public -- Complete or Partial Denials of Applications or Requests for Agency Action, Requests for Agency Review -- Default.

(1) A public member may begin an agency action by filing a Request for Agency Review with the Department.

(2) If the Department denies an application or Request for Agency Action entirely or in part, and that action is subject to agency review, the region, division, or office issuing the denial will send the applicant a written denial notice as promptly as possible. The denial notice will summarize the reasons for the decision and list the statutes or rules the division or office interpreted or relied upon as authority for it, along with the Department's file or reference number. The Department's denial notice will advise the applicant of their right to request agency action seeking review by filing a written request with the initiating region, division, or office within 30 days after the Department issues the denial notice. In addition, the denial notice will inform the applicant that the written request for review must include any supporting documents, including legal memoranda, that the Department should consider. Finally, the denial notice will constitute the proposed order of the division or office making the decision and must so indicate. If there is no request for agency action seeking review within 30 days, the denial notice will become the Department's Final Order.

(3) The Department will evaluate a Request for agency action seeking review to determine if it meets Subsection 63G-4-301(1) requirements. The request must include the requester's signature, state the grounds for the request, the relief sought, and state the date the requester mailed or delivered the request. A Request for Agency Review should also indicate HEARING REQUESTED on the first page of the request if the applicant wants the Department to schedule a hearing. The Department will return the request to the requester if it does not meet the statutory requirements, the requirements of this rule, or is untimely. The Department must explain the reason for the return.

(4) If the request meets the requirements and is timely, the region, division, or office will promptly forward the material and a copy of any relevant material in its files to the Presiding Officer.

(5) Within 30 business days after receipt of a Request for Agency Review, a party, including the region, division, or office that issued the challenged decision, may submit additional documentation, which may include legal briefs, to the Presiding Officer. The Presiding Officer may grant a party a reasonable extension of time. The Presiding Officer will issue a written decision after the parties submit their responses. The Presiding Officer may meet with the parties if needed. This meeting is not a hearing as contemplated under the Administrative Procedures Act, Title 63G, Chapter 4.

(6) Absent filing a timely Request for Agency Review, the Department will issue an order that the Respondent is in default. If the defaulting party is the sole Respondent, the Presiding Officer will dismiss the Request for Agency Action. The Department will provide a copy of the Default Order and the dismissal order to the person who requested the action.

(7) If the defaulting party is not the sole requester, the initiating division, office, or the Presiding Officer will mail the Default Order to every party. The adjudicative proceeding may continue, and the Presiding Officer may determine every issue in the proceeding, including those affecting the defaulting party.

(8) A defaulting party may seek agency review of a Default Order by sending the Presiding Officer a Request for Agency Review. If the Presiding Officer issued the Default Order, the defaulting party might seek reconsideration of the Default Order according to Section

R907-1-8. The sole issue for the Presiding Officer to decide is whether entering default was appropriate.

R907-1-6. Agency Review -- Procedures.

(1) Informal adjudicative proceedings will follow the procedures outlined in Section 63G-4-203 and Section 63G-4-209, and Section R907-1-6 or Section R907-1-9 for Motor Carrier actions only, where applicable.

(2) Formal adjudicative proceedings will follow the procedures outlined in Sections 63G-4-204 through 63G-4-209 and Sections R907-1-10 through R907-1-15.

(3) The Presiding Officer will ensure that any order resulting from informal or formal adjudicative proceedings complies with applicable state and federal law, including, without limitation, restrictions on the use of federal financial assistance or other entitlement programs.

R907-1-7. Procedures for Informal Adjudicative Proceedings.

(1) Parties must have notice and an opportunity to be heard. The purpose of a proceeding is to determine if the facts and applicable law support the Department's Notice of Agency Action or denial of an application or Request for Agency Action. A written argument is allowed but not required. The Presiding Officer may determine whether to hear the matter in person or electronically based on the parties' written submissions or conditions that make holding the hearing electronically safer or more convenient for the parties. The Presiding Officer will convene a requested hearing unless the Presiding Officer finds no material issue of fact in dispute or that the issue in dispute is frivolous or already authoritatively decided.

(2) The Presiding Officer may set reasonable time, manner, and scope limitations on any witness testimony, presentations by the parties, written argument, and the length of any hearing.

(3) Section 63G-4-203 of UAPA governs an informal adjudicative proceeding, so discovery is prohibited. However, the Presiding Officer may issue subpoenas or other orders to a party to compel the production of necessary evidence. Accordingly, upon request, the Department will provide the applicant information in the Department's files, including records that are part of any investigation, unless those records are otherwise made confidential or protected from disclosure by state or federal law.

(4) Each party may make, at minimum, an opening statement, presentation, and rebuttal. A party may decide whether to have a rebuttal argument heard during the hearing or delivered to the Presiding Officer in writing ten days after the hearing.

(5) Within a reasonable time after the close of an informal adjudicative proceeding, the Presiding Officer will issue a final agency order that complies with Subsections 63G-4-203(1)(i), (j), and (k). The order will contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues;

(iv) conclusions of law as to each of the issues;

(v) the reasons for the disposition;

(vi) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(vii) notice of the right to judicial review under Section 63G-4-402 by filing a Petition in a district court within 30 days after the date the Presiding Officer issues the order constituting the final agency action.

R907-1-8. Reconsideration.

(1) Within 20 days after the Presiding Officer issues the Final Order, a party may request reconsideration, stating the specific grounds upon which the party requests relief.

(2) The person filing the request for reconsideration will mail or email a copy to each party.

(3) The Executive Director, or a designee, will issue a written order either denying or granting the request. If the Executive Director or a designee does not issue this order within 20 days, the request is denied. If the Executive Director or designee grants the request in any part and issues a new Final Order, it will include the same information listed in Section R907-1-7 or Section R907-1-9 if the matter concerned motor carriers.

R907-1-9. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, they will follow the procedures established in Rule R907-1. This proceeding is an informal adjudicative proceeding under Section 63G-4-203 of UAPA; therefore, discovery is prohibited, but the administrative hearing Officer may issue subpoenas or other orders to a party to compel the production of necessary evidence. The Department will provide the applicant, upon request, information in the Department's files, including records that are part of any investigation, unless those records are otherwise made confidential or protected from disclosure by state or federal law.

(2) If the Presiding Officer converts the proceeding to a formal adjudicative proceeding and an evidentiary hearing held, the Department's Executive Director or designee may act as the administrative hearing Officer. At the hearing, the motor carrier will go first and bear the burden of showing why the Department should not assess civil penalties. The division will respond, and the motor carrier will have an opportunity to rebut the division's evidence. If the Presiding Officer decides doing so will benefit the Presiding Officer's understanding of the issues, the Presiding Officer may allow closing statements or arguments and record the proceedings. The rules of evidence do not apply.

(3) The person deciding the review will issue a final agency order as promptly as possible. The order will contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review according to Section 63G-4-402 by filing a Petition with a district court within 30 days.

R907-1-10. Formal Process and Hearing: Initiation.

(1) If notwithstanding Subsection R907-1-2(1), the Department wishes to initiate an adjudicative proceeding as a formal proceeding, it will conduct the formal hearing process as follows:

(2) The Department will prepare and deliver to interested parties a Notice of Agency Action that includes the following information:

(a) the names and mailing addresses of the Respondents and any other persons to whom the Department is giving notice;

(b) the Department's file number or another reference number;

(c) a name or caption of the adjudicative proceeding, for example, Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Department delivered the notice to the Respondents;

(e) the Department's legal authority and jurisdiction allowing it to maintain the adjudicative proceeding;

(f) the name, title, contact information of the office or division initiating the Notice of Agency Action and the Presiding Officer;

(g) a summary of the purpose for the adjudicative proceeding and the questions the Department wants to have decided;

(h) if the Department seeks to assess a fine or penalty, the amount of the proposed fine or penalty and a summary of the evidence and authority supporting the proposed amount;

(i) notice the Department is conducting a formal adjudicative proceeding according to this rule and Sections 63G-4-204 through 63G-4-209;

(j) notice to the Respondent that it must file a written response within 30 days of the mailing date of the Notice of Agency Action;

(k) notice that the Presiding Officer will set a time and place of the hearing after consulting with the parties;

(l) notice of the purpose for the hearing; and

(m) notice that the Department will hold in default a party who fails to attend or participate in the hearing.

(3) Absent the filing of a timely request, the Department will issue an order that the Respondent is in default. If the defaulting party is the sole Respondent, the Notice of Agency Action will become the Department's Final Order. The initiating division or office will revise the Notice of Agency Action to effect this change, captioning the notice as the Final Order, affixing the appropriate signature and the new date. The Department may not change the substance of the Final Order. However, the Final Order will include a notice of the Respondent's right to judicial review. The Department will then deliver a copy of the Default Order and the Final Order to the Respondent.

(4) If the defaulting party is not the sole Respondent, the initiating division or office will mail the Default Order to the parties. The adjudicative proceeding may continue, and the Department may determine the issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of a Default Order by sending a written request to the Presiding Officer identified in Subsection R907-1-3(2). If a Presiding Officer issued the Default Order, the defaulting party must seek reconsideration of the Default Order according to Section R907-1-8. The sole issue on reconsideration is whether entering default was appropriate.

R907-1-11. Formal Process and Hearing: Responses.

(1) For formal adjudicative proceedings, the Respondent must file and serve a written response signed by the Respondent or a representative within 30 days of the mailing date of the Notice of Agency Action. The written response must include:

(a) the Department's file number or another reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief the Respondent seeks;

(d) a statement of the facts; and

(e) a summary of the reasons the Presiding Officer should grant the relief requested.

(2) The Respondent must file the response with the Department and deliver one copy to each party.

(3) Papers this rule allow or require the Respondent to file must be filed with the Presiding Officer. The Respondent must also deliver one copy of each document to each party.

(4) The Presiding Officer may hear from any Respondent without formal written documents.

(5) The Presiding Officer may issue a Default Order against any Respondent who fails to provide any response to a Notice of Agency Action.

R907-1-12. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, seeking to intervene in a formal proceeding must obtain an order from the Presiding Officer granting leave to intervene before being allowed to participate. A potential intervenor must request such an order by providing a signed, written Petition to intervene. The person must file the written Petition with the Department before a response is due as prescribed in Subsection R907-1-11(1) and promptly deliver a copy to each party. The Presiding Officer may consider a Petition to intervene or materials filed after the response date, but only upon separate motion of the potential intervenor made at or before the hearing for a good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The Petition must contain a statement of facts demonstrating the Petitioner has legal rights or interests that may be affected by the formal adjudicative proceeding, or the Petitioner qualifies as an intervenor under any provision of law. Additionally, the Petition must include a statement of the relief requested, including the legal basis for the Petitioner's requested relief from the Presiding Officer.

(3) Response to Petition. Any party to a proceeding in which a person files a Petition to intervene may make an oral or written response opposing the Petition. The response in opposition must state the party's basis for opposing the Petition and may suggest limitations the Presiding Officer should place upon the potential intervenor if the Presiding Officer grants the Petition. The response must be presented or filed at or before the hearing.

(4) Granting of Petition. The Presiding Officer will grant a Petition to intervene if the Presiding Officer determines:

(a) The Petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the potential intervenor's participation in the adjudication will not materially impair the interests of justice or the orderly and prompt conduct of the adjudicative proceedings.

(5) Order Requirements.

(a) Any order granting or denying a Petition to intervene must be in writing and delivered to the Petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding necessary for a just, orderly, and prompt conduct of the proceeding.

(c) The Presiding Officer may impose conditions on the intervenor any time after the intervention.

(d) If the Presiding Officer determines an intervenor has no direct or substantial interest in the proceeding, and the public interest does not require the intervenor's participation, the Presiding Officer may dismiss the intervenor.

(e) In the interest of expediting a hearing, the Presiding Officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially similar interests and positions, the Presiding Officer may limit the number of intervenors who may testify, cross-examine witnesses, or make and argue motions and objections.

R907-1-13. Formal Process and Hearing: Conduct of Hearings.

The Presiding Officer will follow these procedures when conducting hearings for a formal adjudication:

(1) Public Hearings. Hearings must be open to the public unless otherwise ordered by the Presiding Officer with a showing of good cause. Hearings must be accessible by the parties.

(2) Full Disclosure. The Presiding Officer will regulate the course of the hearing to fully disclose relevant facts and afford the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Presiding Officer will use the Utah Rules of Evidence as appropriate guides as they apply to the proceeding and are not inconsistent with this rule.

(4) Notwithstanding Subsection R907-1-13(3), on the Presiding Officer's motion or upon objection of a party, the Presiding Officer:

(a) may exclude evidence that is irrelevant, immaterial, or repetitious;

(b) will exclude evidence privileged by law in the courts of Utah;

(c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains pertinent portions of the original document; and

(d) may take official notice of:

(i) any facts to which a court might grant judicial notice under the Utah Rules of Evidence;

(ii) the record or another proceeding before the Department; and

(iii) technical or scientific facts within the Department's specialized knowledge.

(5) Hearsay. Notwithstanding Subsection R907-1-13(4)(c), the Presiding Officer may not exclude evidence solely because it is hearsay.

(6) Parties Rights. The Presiding Officer must allow the parties to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(7) Public Participation. The Presiding Officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(8) Oath. If offered as evidence to be considered in deciding on the merits, witnesses must present testimony at the hearing under oath.

(9) Failure to Appear. When a party to a proceeding with due notice fails to appear at a hearing, the Presiding Officer may enter a Default Order that accords with this rule.

(10) Time Limits. The Presiding Officer may set reasonable time limits for the hearing participants.

(11) Continuances of the Hearing. The Presiding Officer may continue any hearing to a time and date certain announced at the hearing, which will not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the dereliction of the party requesting the continuance. In addition, the Presiding Officer may continue a hearing when in the public interest.

(12) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the Presiding Officer may permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule designated by the Presiding Officer.

(13) Record of Hearing. Subsection R907-1-3(2) governs the recording of the hearing.

(14) Preserving Integrity. This section does not preclude the Presiding Officer from taking appropriate measures necessary to preserve the integrity of the hearing.

(15) Witness Fees, Summons, Discovery, and Construction.

(a) Witness fees. The Presiding Officer may allow appropriate witness fees as statute or rule provides.

(b) Summons. The Presiding Officer may issue a summons or subpoena on the Presiding Officer's motion. Upon request of a party, the Presiding Officer will issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

(c) Discovery. Upon the motion of a party and for a good cause shown that it is to obtain relevant information necessary to support a claim or defense, the Presiding Officer may authorize such manner of discovery against another party or person, including the Department's staff, as may be prescribed by and in the form provided by the Utah Rules of Civil Procedure.

(d) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Executive Director or a Deputy Director by law.

R907-1-14. Formal Process and Hearing: Decisions and Orders.

(1) Decision. The Presiding Officer will sign and issue an order that includes:

(a) a statement of the Presiding Officer's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or facts officially noticed;

(b) a statement of the reasons for the Presiding Officer's decision;

(c) a statement of any relief ordered;

(d) a notice of the right to apply for reconsideration;

(e) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(f) the time limits applicable to any reconsideration or review.

(2) Preparation of Order. The Presiding Officer may direct the prevailing party to prepare proposed findings of fact, conclusions of law, and an order consistent with the requirements of this rule, which will be completed within ten days of the direction unless otherwise instructed by the Presiding Officer. The prevailing party will serve copies of the proposed findings of fact, conclusions of law, and order upon the parties of record before being presented to the Presiding Officer for signature. A party objecting to any part of an order will serve a Notice of Objection to the Presiding Officer and parties of record within ten calendar days of the date of the order.

(3) Entry of Order. The Presiding Officer will sign the order and cause the same to be entered and indexed in books kept for that purpose. The order will be effective on the date it is issued unless otherwise provided in the order. Upon the Petition of a person subject to the order and for a good cause shown, the Presiding Officer may extend the time for compliance fixed in its order.

(4) Evaluation of Evidence. The Presiding Officer may use expertise, technical competence, and specialized knowledge to evaluate the evidence.

(5) Hearsay. No contested finding of fact may be based solely on hearsay evidence.

(6) Interim Orders. This section does not preclude the Presiding Officer from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(7) Notice. The Presiding Officer will notify the parties of the decision by delivering copies of the order with accompanying findings of fact and conclusions of law to each party.

R907-1-15. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the Presiding Officer issues the Final Order in a formal adjudicative process, any party may file a written request for reconsideration or rehearing, stating the specific grounds upon which the party requests relief.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the Final Order.

(3) Mailing Requirement. A party seeking reconsideration must file a Petition for Reconsideration with the Presiding Officer. The person making the request must deliver one copy of the Petition to each.

(4) Contents of Petition. A Petition for Reconsideration must set forth specifically the particulars in which the Petitioner claims the order or decision is unlawful, unreasonable, or unfair. If the Petitioner bases a Petition on a claim that the Presiding Officer failed to consider specific evidence, it must include an abstract of that evidence. If the Petitioner bases the Petition upon newly discovered evidence, the Petitioner must include with the Petition an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence before the hearing.

(5) Response to Petition. Other parties to the proceeding may file a response to the Petition with the Presiding Officer no later than ten days from the Petition's filing date. Parties filing such a response must deliver a copy of their response to the Petitioner on the date they file their response.

(6) Action on the Petition. The Presiding Officer is authorized to act upon the Petition for reconsideration. If the Presiding Officer does not issue an order within 20 days after the Petition filing, the Petitioner must consider the request for reconsideration denied. The Presiding Officer may, by written order, set a time for hearing on said Petition or deny the Petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Presiding Officer will be treated as a new Request for Agency Action under this rule. Such a request for modification or amendment must include the parties to the previous adjudicative proceeding and their successors in interest as directly affected persons.

R907-1-16. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may Petition the Department to appoint a Presiding Officer to hear arguments for and against issuing a declaratory order on the applicability of any Department administrative rule, federal regulation, or order as well as any provision of the Utah Code within the jurisdiction of the Department, which directly affect the operations or activities of that person. The Petition must include the questions and answers sought and reasons supporting or opposing the application of the statute, rule, federal regulation, or order involved.

(2) Not Subject to Declaratory Rulings. A Presiding Officer may not issue a declaratory ruling if:

(a) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) there would be substantial prejudice to the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of Section R907-1-12.

(4) Forms of Rulings. After receiving a Petition for a declaratory order, a Presiding Officer may issue a written order:

(a) declaring the applicability of the statute, rule, regulation, or order in question to the specified circumstances; or

(b) decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order will contain:

(a) the names of the parties to the proceeding;

(b) the particular facts that are the basis of the proceeding; and

(c) the reasons for its conclusion.

(6) Mailing of Order. The Presiding Officer will promptly deliver a copy of orders issued in response to a request for a declaratory proceeding to the Petitioner and other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the Petitioner and the Presiding Officer agree in writing to an extension, if the Presiding Officer has not issued a declaratory order within 60 days after receiving the request for a declaratory order, the Petitioner may consider the Petition denied.

R907-1-17. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies according to Section 63G-4-401 before seeking judicial review.

(2) In any adjudicative proceeding before a Presiding Officer, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that have exhausted these available and adequate remedies before a Presiding Officer may be allowed to seek judicial review of a Presiding Officer's final action.

R907-1-18. Deadline for Judicial Review.

A party must file a Petition for judicial review of final agency action within 30 days after the order constituting the final agency action is issued. The Petition must name the Department and other appropriate parties as Respondents and meet the form requirements specified in Title 63G, Chapter 4 Administrative Procedures Act.

R907-1-19. Judicial Review of Formal Adjudicative Proceedings.

Section 63G-4-403 governs the Judicial Review of the Department's formal adjudicative proceedings.

R907-1-20. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Transportation Commission or Department rules, the Department may pursue civil enforcement of an order in the district courts.

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom the Department seeks civil enforcement.

(b) The Utah Rules of Civil Procedure must determine the venue for an action seeking civil enforcement.

(c) The action may request, and the court may grant, any of the following:

(i) declaratory relief;

(ii) temporary or permanent injunctive relief;

(iii) any other civil remedy provided by law; or

(iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of the Department to enforce its order may file a complaint with a district court seeking civil enforcement of that order. The complaint must name as defendants the Department and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not begin:

(a) until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or the Department, the attorney general, and to each alleged violator against whom the Petitioner seeks civil enforcement;

(b) if the Commission or the Department has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

(c) if a Petition for judicial review of the same order has been filed and is pending in court.

R907-1-21. Waivers.

Notwithstanding any other provision of this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to the Department. This waiver provision may not prohibit default findings as defined in this rule.

R907-1-22. Construction.

The UAPA described in Title 63G, Chapter 4 Administrative Procedures Act, or any other federal, state statute, or federal regulation will supersede any conflicting provision of this rule. Accordingly, the Department intends that, where possible, this rule be construed to comply with those superseding provisions.

KEY: administrative procedures, enforcement (administrative)
Date of Last Change: 2022[~~December 9, 2013~~]
Notice of Continuation: December 19, 2019
Authorizing, and Implemented or Interpreted Law: 63G-4-101 through 502; 72-1-102

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R988-200**	**Filing ID 54724**

Agency Information

1. Department:	Workforce Services
Agency:	Homeless Services
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244
City, state and zip:	Salt Lake City, UT 84145-0244

Contact person(s):

Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R988-200. Homeless Shelter Cities Mitigation Restricted Account

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

This rule is no longer necessary as a result of the passage of H.B. 440, Homeless Services Amendments, passed during the 2022 General Session which moved and renumbered provisions related to the Homeless Shelter Cities Mitigation Restricted Account and substantially change the rule requirements. A new rule has been filed and is published in this issue of the Bulletin. The Department plans to enact the new rule at the same time as repealing this rule.
(EDITOR'S NOTE: The proposed new Rule R988-400 is under ID 54725 in this issue, July 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This rule is repealed in its entirety.

Please note that the Notice of Effective Date of this repeal may be filed after the date shown in box 10. The Notice of Effective Date may be filed at any time between 08/22/2022, and 11/12/2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The repeal is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

B) Local governments:

The repeal is not expected to have any fiscal impact on local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

The repeal is not expected to have any fiscal impact on small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

The repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

The repeal is not expected to have any fiscal impact on other persons revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

The repeal requires no action or compliance by any persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this repeal will not result in a fiscal impact beyond what was addressed in the fiscal note of H.B. 440 (2022). Casey Cameron, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 35A-16-401	Section 35A-16-403	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of

Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/14/2022

R988. Workforce Services, Homeless Services.

[~~R988-200. Homeless Shelter Cities Mitigation Restricted Account.~~

~~R988-200-1. Authority.~~

~~This rule is authorized under Section 35A-16-306 which directs the office to make rules governing the process for determining whether there is sufficient revenue to operate a grant program for grant eligible entities, the process for notifying grant eligible entities of available grants, and the process for the office to determine the timeline within the fiscal year for funding such grants.]~~

~~R988-200-2. Definitions.~~

~~Terms used in this rule have the meanings given them in Title 35A, Chapter 16, Office of Homeless Services.~~

~~R988-200-3. Availability of Account Funds; Process for Accepting Requests.~~

~~(1) In determining whether there is sufficient revenue to the account to offer a grant program for the next fiscal year, the homelessness council shall consider the following:~~

~~(a) the amount of account funds allocated to eligible municipalities for the current fiscal year;~~

~~(b) any changes anticipated to the amount of account funds allocated to eligible municipalities for the next fiscal year; and~~

~~(c) any other considerations identified by the homelessness council.~~

~~(2) The office shall announce whether there is sufficient revenue to the account to offer a grant program for the next fiscal year no later than August 31 of each year. The announcement shall be made at meetings of the homelessness council and on the office website.~~

~~(3) If the homelessness council determines there is sufficient revenue to the account to offer a grant program for the next fiscal year, the homelessness council shall set aside time on the agenda of the homelessness council meeting held in November of each year to allow grant eligible entities to present requests for account funds for the next fiscal year.~~

~~R988-200-4. Process for Funding Requests.~~

~~(1) A grant eligible entity that is approved to receive account funds under Section 63J-1-802 shall submit an invoice of the grant eligible entity's expenses, with supporting documentation as required by the grant agreement, to the office monthly for reimbursement.~~

~~(2) Each month, the office shall disburse the revenue in the account to reimburse a grant eligible entity that submits the information described in Subsection R988-200-4(1) for the amount on the invoice or the maximum allowable monthly amount pursuant to the grant agreement, whichever is less.~~

~~KEY: grants, Homeless Shelter Cities Mitigation Restricted Account~~

~~Date of Last Change: February 22, 2022~~

~~Authorizing, and Implemented or Interpreted Law: 35A-16-306~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R988-400**	**Filing ID 54725**

Agency Information

1. Department:	Workforce Services
Agency:	Homeless Services
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244
City, state and zip:	Salt Lake City, UT 84145-0244

Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R988-400. Homeless Shelter Cities Mitigation Restricted Account

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The passage of H.B. 440, Homeless Services Amendments, passed during the 2022 General Session necessitates a new rule. In accordance with the H.B, 440, this new rule defines the services eligible for funding from the Homeless Shelter Cities Mitigation Restricted Account and provides rules for calculating the amount to funds that an eligible municipality may receive from the Homeless Shelter Mitigation Restricted Account.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This new rule provides that eligible services include social services and community or neighborhood programs. Provides that the office will use Utah Homeless Management System to determine the number of individuals experiencing homelessness; that it will use information from the Utah State Tax Commission to determine municipalities' populations; that it will use the

Housing Inventory Count to determine shelter capacity; and that funds disbursed to third-tier eligible municipalities will be disbursed proportionally.

Please note that the Notice of Effective Date of this rule may be filed after the date shown in box 10. The Notice of Effective Date may be filed at any time between 08/22/2022, and 11/12/2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This new rule is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

B) Local governments:

This new rule is not expected to have any fiscal impact on local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This new rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This new rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This new rule is not expected to have any fiscal impact on other persons revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

This new rule requires no action or compliance by any persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this rule will not result in a fiscal impact beyond what was addressed in the fiscal note of H.B. 440 (2022). Casey Cameron, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 35A-16-401	Section 35A-16-403	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/14/2022

R988. Workforce Services, Homeless Services.

R988-400. Homeless Shelter Cities Mitigation Restricted Account.

R988-400-1. Authority.

This rule is authorized under Subsection 35A-16-401(3) which directs the office to provide additional detail to the definition of "eligible services" and Subsection 35A-16-403(4) which requires the office to make rules governing the process for calculating the amount of funds that an eligible municipality may receive under Subsection 35A-16-402(4). Additionally, Subsection 35A-16-402(4)(a) requires that Section R988-400-6, pertaining to disbursal of funds to third-tier eligible municipalities, receive council approval.

R988-400-2. Definitions.

Terms used in this rule have the meanings given them in Title 35A, Chapter 16, Office of Homeless Services. In addition:

(1) "Eligible services" includes social services, public sanitation services, and community or neighborhood programs that, in the office's judgment, mitigate the impacts of the location of an eligible shelter. Such services may include:

(a) client services for persons experiencing homelessness;

(b) medical staff to serve clients of the eligible shelter;

(c) provision of public toilets;

(d) garbage collection services; or

(e) managing relationships with local businesses or neighborhood associations.

(2) "HIC" means Housing Inventory Count.

(3) "HMIS" means the Utah Homeless Management System.

R988-400-3. Determination of Number of Individuals Experiencing Homelessness.

For purposes of Subsections 35A-16-402(4)(a)(i)(A) and (4)(a)(ii)(A), for eligible shelters that submit data to HMIS the office shall determine the "total number of individuals experiencing homelessness who are served by eligible shelters within each municipality" by referring to the consolidated annual performance and evaluation report prepared by HMIS. For eligible shelters operated by domestic violence service providers, which do not submit information to HMIS, any information necessary to make the determination shall be reported directly to the office.

R988-400-4. Determination of Total Population of Municipality.

For purposes of Subsections 35A-16-402(4)(a)(i)(B) and (4)(a)(ii)(B), the office shall determine the total population of a municipality using information provided to it by the Utah State Tax Commission.

R988-400-5. Determination of Year-Round Capacity of Eligible Shelters Within Each Municipality.

For purposes of Subsections 35A-16-402(4)(a)(i)(C) and (4)(a)(ii)(C), the office shall determine the "total year-round capacity of all eligible shelters within each municipality" by referring to the most recent HIC. Any municipality that begins operating an eligible shelter after the most recent HIC and would like to be considered for allocation from the Restricted Account must contact the office in writing. The office will then work with the municipality to determine the capacity.

R988-400-6. Formula for Disbursal of Funds to Third-Tier Eligible Municipalities.

(1) The funds set aside under Subsection 35A-16-402(4)(a)(iii) shall be disbursed proportionately among applicants based on the number of beds available in eligible shelters within the applicable third-tier municipality as compared to the total number of beds available in eligible shelters in all third-tier eligible municipalities in Utah combined, as determined by the office.

(2) In determining the number of available beds in any third-tier eligible municipality, the office shall have broad discretion to use whatever sources it deems relevant, and shall have authority to request information from shelters and verify the information received.

KEY: grants, Homeless Shelter Cities Mitigation Restricted Account
Date of Last Change: 2022
Authorizing, and Implemented or Interpreted Law: 35A-16-401; 35A-16-403

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R988-500**	**Filing ID 54726**

Agency Information

1. Department:	Workforce Services
Agency:	Homeless Services

Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R988-500. Overflow Plan Requirements

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The passage of H.B. 440, Homeless Services Modifications, during the 2022 General Session authorized: 1) rules governing submission and review of overflow plans, 2) the process of sending a notice of noncompliance, and 3) the location, establishment, and operation of a temporary overflow shelter.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This rule requires that overflow plans be submitted via email; that office staff will review overflow plans and notify municipalities if the plans do not meet statutory requirements; and that preference will be given to non-profit or local government entities for the establishment and operation of overflow shelters.

Please note that the Notice of Effective Date of this new rule may be filed after the date shown in box 10. The Notice of Effective Date may be filed at any time between 08/22/2022, and 11/12/2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This new rule is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

B) Local governments:

This new rule is not expected to have any fiscal impact on local government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This new rule is not expected to have any fiscal impact on small businesses revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This new rule is not expected to have any fiscal impact on non-small businesses revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This new rule is not expected to have any fiscal impact on other persons revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 440 (2022).

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

This new rule requires no action or compliance by any persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this new rule will not result in a fiscal impact beyond what was addressed in the fiscal note of H.B. 440 (2022).
Casey Cameron, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 35A-16-503		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/14/2022

R988. Workforce Services, Homeless Services.
R988-500. Overflow Plan Requirements.
R988-500-1. Authority.

This rule is authorized under Section 35A-16-503 which requires the office to make rules governing the submission and review of an overflow plan; the process of sending a notice of noncompliance; and the location, establishment, and operation of a temporary overflow shelter.

R988-500-2. Definitions.

Unless otherwise specified, terms used in this rule have the meanings given them in Title 35A, Chapter 16, Office of Homeless Services.

R988-500-3. Submission of Overflow Plan.

Councils of governments shall submit the overflow plan via email to the office's assistant director and at least one additional member of office staff.

R988-500-4. Review of Overflow Plan.

Office staff shall review the overflow plan, make an initial determination of compliance with statutory requirements, and notify the office's assistant director and the state homelessness coordinator of the initial determination. The office's assistant director and the state homelessness coordinator shall then review the overflow plan and determine whether to approve or reject office staff's determination.

R988-500-5. Transmission of Notice of Noncompliance.

When the office's assistant director and the state homelessness coordinator determine that an overflow plan does not comply with statutory requirements, office staff shall notify via email the parties listed at Subsection 35A-16-502(5).

R988-500-6. Location, Establishment, and Operation of Temporary Overflow Shelter.

(1) When contracting with an entity for the operation of a temporary overflow shelter as permitted by Subsection 35A-16-502(6)(c), the office shall first try to contract with a non-profit entity. If the office cannot contract with a non-profit entity, the office shall contract with a local government entity associated with the municipality or county in which the temporary overflow shelter is located. If the office cannot contract with either a non-profit entity or a local government entity, other qualified entities shall be considered.

(2) When determining the location of a temporary overflow shelter, the office shall consult with the Utah Homeless Network steering committee and the local homeless council ("LHC") with jurisdiction over the applicable municipality or county. The office shall give preference to sites with adequate access to transportation, food, and services, as determined in the office's sole discretion. The office shall also, in conjunction with the LHC, determine an overflow shelter's capacity. All other factors being

equal in the office's sole discretion, the office shall give preference to the shelter with the most capacity.

KEY: overflow shelter, homelessness
Date of Last Change: 2022
Authorizing, and Implemented or Interpreted Law: 35A-16-503

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R988-600**	**Filing ID 54727**

Agency Information

1. Department:	Workforce Services	
Agency:	Homeless Services	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R988-600. Administration of COVID-19 Homeless Housing and Services Grant Program

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**

The passage of S.B. 328, Homeless Services Modifications, during the 2022 General Session authorized rules governing: 1) grant application requirements, 2) procedures for grant approval, and 3) procedures for distributing money to grant recipients.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**

This rule requires that applications follow certain procedures approved by the Utah Homelessness Council, that a review committee will recommend applications for the Council's approval or disapproval, and that the grants contain certain contractual provisions to ensure compliance with relevant statutes and regulations.

Please note that the Notice of Effective Date of this new rule may be filed after the date shown in box 10. The Notice of Effective Date may be filed at any time between 08/22/2022, and 11/12/2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

This new rule is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 328 (2022).

B) Local governments:

This new rule is not expected to have any fiscal impact on local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 328 (2022).

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This new rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 328 (2022).

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

This new rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 328 (2022).

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This new rule is not expected to have any fiscal impact on other persons revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 328 (2022).

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

This new rule requires no action or compliance by any persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this new rule will not result in a fiscal impact beyond

what was addressed in the fiscal note of S.B. 328 (2022).
Casey Cameron, Executive Director

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 35A-16-602		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

10. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/14/2022

R988. Workforce Services, Homeless Services.
R988-600. Administration of COVID-19 Homeless Housing and Services Grant Program.
R988-600-1. Authority.

This rule is authorized under Subsection 35A-16-602(2) which requires the office to make certain rules governing the administration of the COVID-19 Homeless Housing and Services Grant Program.

R988-600-2. Grant Application Requirements.

Applications must be submitted via the established process outlined in the request for grant applications approved by the Utah Homelessness Council (Council) and published on the Utah Public Notice website.

R988-600-3. Procedures to Approve a Grant.

Office staff will review each application to ensure the application meets the statutory requirements detailed in Section 35A-16-602. A review committee established by the Council will review and score eligible application and make recommendations to the Council. The Council shall have exclusive authority to approve or deny applications.

R988-600-4. Procedures for Distributing Money to Grant Recipients.

A list of approved applications will be published on the Utah Public Notice website. The office shall directly distribute the awarded grants to approved applicants ("recipients"). The grants shall comply with applicable federal and state guidelines. The grants shall include a recapture provision that requires a recipient to return the full grant amount to the office if the recipient's use of the grant violates any statute, rule, or regulation.

KEY: grants, COVID-19, homelessness
Date of Last Change: 2022
Authorizing, and Implemented or Interpreted Law: 35A-16-602

NOTICES OF
CHANGES IN PROPOSED RULES

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 August 15, 2022.

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 Office 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 Office of Administrative Rules.

From the end of the 30-day waiting period through November 12, 2022, an agency may notify the Office 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 Office 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.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	**R392-110**	**Filing ID: 54455**

Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention, Environmental Services	
Room no.:	Second Floor	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 142102	
City, state and zip:	Salt Lake City, UT 84114-2102	
Contact person(s):		
Name:	**Phone:**	**Email:**
Karl Hartman	801-538-6191	
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R392-110. Food Service Sanitation in Residential Care Facilities

3. Publication date of previous proposed rule or change in proposed rule:

04/15/2022 (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the April 15, 2022, issue of the Utah State Bulletin, on page 97. 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 CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

4. Reason for this change (Why is the agency submitting this filing?)**:**

The Department of Health and Human Services is making this change: 1) to be consistent with Rules R392-100 and R501-1; 2) to coincide with industry standards; and 3) to prevent an unnecessary negative fiscal impact to small business.

5. Summary of this change (What does this filing do?)**:**

This change causes this rule to apply to food service provided in facilities with a 24-hour group living environment for up to 16 individuals rather than 12 individuals.

Fiscal Information

6. Aggregate anticipated cost or savings to:

A) State budget:

No anticipated cost or savings because the change does not affect existing operations.

B) Local government:

No anticipated cost or savings because the change does not affect existing operations.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

This change may result in a fiscal benefit to small business, particularly residential care facilities that care for between 12 and 16 individuals. This benefit is inestimable as the necessary data are not available to parse this section of residential care facilities from all others.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**

No anticipated cost or savings because the change does not affect existing operations.

E) Persons other than small businesses, non-small businesses, or state or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

No anticipated cost or savings because the change does not affect existing operations.

F) Compliance costs for affected persons:

This change may result in a fiscal benefit to affected persons, particularly residential care facilities that care for between 12 and 16 individuals. This benefit is inestimable as the necessary data are not available to parse this section of residential care facilities from all others. Those facilities being brought under this rule could have been required previously to meet commercial requirements of the food code.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

The proposed change will decrease the fiscal impact on small business by changing requirements for businesses that care for 12 to 16 individuals and is consistent with industry standards. Tracy Gruber, Executive Director

7. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

Citation Information

8. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26-15-2	Subsection 26-1-30(9)	Subsection 26-1-30(23)
Section 26-1-5	Section 26-7-1	Subsection 26-39-301(1)

Public Notice Information

10. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/15/2022

11. This rule change MAY become effective on:	08/22/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	**Date:**	06/27/2022

R392. Health, Disease Control and Prevention, Environmental Services.
R392-110. Food Service Sanitation in Residential Care Facilities.
R392-110-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-15-2, 26-1-5, 26-7-1, and Subsections 26-1-30(9), 26-1-30(23), and 26-39-301(1).

(2) This rule establishes uniform food service inspection standards for residence-based group care facilities.

R392-110-2. Applicability.

(1)(a) This rule applies to food service provided in a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children.

(b) Rule R392-100, Food Service Sanitation, governs food service provided in a facility that cares for more than 16 children.

(2)(a) This rule applies to food service provided in facilities with a 24-hour group living environment for between four and [~~12~~]16 individuals unrelated to the owner, or provider, including any:

(i) residential treatment program;

(ii) residential support program; and

(iii) recovery residence.

(b) Rule R392-100, Food Service Sanitation, governs food service in a facility as described in Subsection (2)(a) that provides care for more than [~~12~~]16 individuals.

R392-110-3. Definitions.

For the purposes of this rule:

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

(2) "FDA Food Code" means the [~~most recent~~]FDA Model Food Code [~~as adopted~~]incorporated by reference with amendments in Rule R392-100, Food Service Sanitation.

(3) "Food handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment as defined in FDA Food Code.

(4) "Food handler permit" means a permit issued by a local health department to allow a person to work as a food handler.

(5) "Food processing facility" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, but does not provide food directly to a consumer, including any establishment that cans food, or packages food in packaging with a modified atmosphere, and is inspected by the local, state, or federal food regulatory agency having jurisdiction.

(6) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).

(7) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.

(8) "Nuisance" means a condition or hazard, or the source thereof, that may be deleterious or detrimental to the health, safety, or welfare of the public.

(9) "Operator" means any person who owns, leases, manages or controls, or who has the duty to manage or control a residential care facility.

(10) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(11) "Provider" means a person with ownership or overall responsibility for managing or operating a residential care facility.

(12) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).

(13) "Residential care facility" means:

(a) a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children; or

(b) a facility with a 24-hour group living environment for between four and 12 individuals unrelated to the owner or provider such as:

(i) a residential treatment program;

(ii) a residential support program; or

(iii) a recovery residence.

(14) "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).

(15) "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).

(16) "Service animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(17) "Time and temperature control for safety food" or "TCS" means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation, including any inclusion or exclusion defined in FDA Food Code.

R392-110-4. Facility Inspection and General Requirements.

(1) Except at stated in this rule, a residential care facility is exempt from the requirements of Rule R392-100, Food Service Sanitation.

(2) After a provider requests an inspection and pays the inspection fee, a local health officer shall inspect a residential care facility based on the food safety standards established in Section R392-110-5.

(3) A local health officer shall use an inspection form approved by the Department.

(4) Upon satisfactory completion of the inspection, the local health officer shall issue a written report to the provider stating that the facility food services comply with this rule.

(5)(a) Except as in Subsection (5)(b), this rule does not require a construction change in any portion of a residential care facility if the facility was in compliance with the law in effect when the facility was constructed.

(b) The local health officer may require a construction change if it is determined the residential care facility, or portion thereof, is dangerous, unsafe, unsanitary, or a nuisance.

(6) The operator shall ensure the residential care facility meets the requirements of this rule.

(7) The operator shall comply with applicable building, zoning, electrical, health, fire codes, and any local ordinances.

R392-110-5. Food Safety Standards.

(1) When conducting an inspection, a local health officer shall verify that the provider is maintaining a residential care facility according to the following standards:

(a) The potable water supply system is designed, installed, and operated according to the requirements set forth by:

(i) Plumbing Code;

(ii) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309, Environmental Quality, Drinking Water; and

(iii) Local health department regulations.

(b) Food is obtained from a:

(i) grocery store;

(ii) permitted food establishment;

(iii) food processing facility; or

(iv) farmer's market only if whole produce is being obtained.

(c) Food has not been adulterated, as defined in Section 402 of the Federal Food, Drug, and Cosmetic Act, 21 USC 342.

(d) Food is protected from contamination by storing the food;

(i) in a clean, dry location where it is not exposed to splash, dust, or other contamination; and

(ii) at least six inches above the floor.

(e) Food is not stored:

(i) in a toilet room;

(ii) in a mechanical room;

(iii) under any sewer line;

(iv) under any leaking water line; or

(v) under any source of contamination.

(f) Food brought in by friends or relatives to serve to other individuals in the facility is obtained from an approved source that complies with Rule R392-100, Food Service Sanitation.

(g) Food brought in by a parent or guardian for specific use of that person's child is labeled with the name of the child.

(h) Bottled or canned baby food, upon opening, is labeled on the outside of the container with the date and time of opening.

(i) Any TCS food product stored inside a refrigerator, including any canned or bottled opened baby food container, is stored at 41 degrees F or below.

(j) Except for a dry product, canned or bottled baby food is discarded if not used within 24 hours of opening.

(k) Infant formula or breast milk is discarded after feeding or within two hours of initiating a feeding.

(l) A refrigerator used to store food for children or residents is maintained and cleaned to prevent contamination of stored food.

(m)(i) A calibrated thermometer is conspicuously placed in the refrigerator; and

(ii) a calibrated metal stem food temperature measuring device is provided and readily accessible.

(n) TCS food prepared at a residential care facility meets the critical cooking, reheating, hot holding, cold holding, and cooling temperatures as required in Rule R392-100, Food Service Sanitation.

(o) Each caregiver or client who works as a food handler:

(i) has a copy of a current food handler permit on file at the facility; and

(ii) abides by the employee health requirements described in Part 2-2 of FDA Food Code.

(p) Food is served on:

(i) clean and sanitized dishware;

(ii) a single-service item designed to hold food; or

(iii) a clean and sanitized high chair tray.

(q) Any napkin used is:

(i) single-service; or

(ii) properly laundered.

(r) Any cup used for beverage service is:

(i) single-service; or

(ii) clean and sanitized before use.

(s) Before each use, any reusable food holder, utensil, and preparation surface is cleaned and sanitized as required in Parts 4-5 and 4-6 of FDA Food Code.

(t) Food handlers clean their hands and exposed portions of their arms:

(i) immediately before engaging in food preparation, including working with exposed food, clean equipment and utensils, or unpackaged single-service and single-use articles;

(ii) after touching a bare human body part other than clean hands and clean exposed portions of arms;

(iii) after using the toilet room;

(iv) after caring for or handling any animal, including a service animal;

(v) when switching between working with raw food and ready to eat food; and

(vi) as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.

(u) Hand washing facilities are located to allow convenient use by food handlers in food preparation, food dispensing, and ware washing areas; and in or immediately adjacent to toilet rooms.

(v) When preparing food, food handlers wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that effectively keep hair from contacting exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

(w) Food handlers wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(x) Poisonous or toxic chemicals are:

(i) properly identified;

(ii) safely stored to prevent access by children, or at-risk youth or adults; and

(iii) stored so they cannot contaminate food, equipment, utensils, linens, or single-service and single-use articles.

(y) Only those poisonous or toxic materials that are required for the operation and maintenance of food storage, preparation, and service areas such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents are in the food storage, preparation, and service areas.

(2) The provider may elect to allow an animal in a residential care facility if:

(a) an animal in a food storage or food preparation area is a service animal assisting a person with a disability;

(b) except for a service animal, an animal is allowed in a dining area only if:

(i) food is not served; and

(ii) surfaces are cleaned before the next food service;

(c) animal hair, fur, feathers, feces, and soiled bedding is removed as often as necessary to prevent unsanitary conditions or objectionable odors; and

(d) any animal allergen, odor, noise, filth, or other nuisance does not cause a disturbance to residents.

R392-110-6. Severability.

If a provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

KEY: child care providers, food service, residential support, residential treatment
Date of Last Change: 2022
Notice of Continuation: March 11, 2021
Authorizing, and Implemented or Interpreted Law: 26-15-2; 26-1-30(9); 26-1-30(23); 26-1-5; 26-7-1; 26-39-301(1)

End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([~~example~~]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (**. . . . . .**) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	**R380-500**	**Filing ID: 54733**

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration (Health)	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R380-500. Agency Authority
3. Effective Date:
07/01/2022
4. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
This rule clarifies the rule authority for the Department of Health and Human Services.
5. Summary of the new rule or change (What does this filing do?)**:**
This rule clarifies that the Department of Health and Human Services shall have the authority for all rules made effective under Title 26B, Department of Health and Human Services Code; Title 26, Utah Health Code; and Title 62A, Utah Human Services Code. (EDITOR'S NOTE: A corresponding proposed new Rule R380-500 is under ID 54732 and will be published in the August 1, 2022, issue of the Bulletin.)

6. A) The agency finds that regular rulemaking would:	
	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
X	place the agency in violation of federal or state law.
B) Specific reasons and justifications for this finding:	

As the Department of Health and Department of Human Services are consolidating, so is the rulemaking authority associated with the Department. This emergency rule reflects changes to the Department's code and rulemaking authority which go into effect 07/01/2022. This rule establishes that the Department of Health and Human Services shall have authority over any rules made under Title 26B, Department of Health and Human Services Code; Title 26, Utah Health Code; and Title 62A, Utah Human Services Code. This rule also identifies that any reference to the Department of Health or the Department of Human Services will refer to the Department of Health and Human Services, effective 07/01/2022.

Fiscal Information

7. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs or savings to the state budget associated with this rule. This rule is the result of the consolidation of the Department of Health and the Department of Human Services and is technical in nature.

B) Local governments:

There are no anticipated costs or savings for local governments associated with this rule. This rule is the result of the consolidation of the Department of Health and the Department of Human Services and is technical in nature.

C) Small businesses ("small business" means a business employing 1-49 persons)**:**

There are no anticipated costs or savings for small businesses associated with this rule. This rule is the result of the consolidation of the Department of Health and the Department of Human Services and is technical in nature.

D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

There are no anticipated costs or savings for persons other than small businesses, non-small businesses, state, or local government entities, associated with this rule. This rule is the result of the consolidation of the Department of Health and the Department of Human Services and is technical in nature.

E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs associated with this rule.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There is no fiscal impact on businesses because this rule does not change any requirements of businesses. Tracy Gruber, Executive Director, Department of Health and Human Services

Citation Information

8. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26B-1-103	Section 26B-1-202	

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	**Date:**	06/29/2022

R380. Health and Human Services, Administration.
R380-500. Agency Authority.
R380-500-1. Purpose.

This rule clarifies the rule authority for the Department of Health and Human Services.

R380-500-2. Authority.

(1) Effective July 1, 2022, in accordance with Section 26B-1-103 and 26B-1-202 the Department of Health and Human Services shall have the authority for all rules made effective under:

(a) Title 26B, Department of Health and Human Services Code;

(b) Title 26, Utah Health Code; and

(c) Title 62A, Utah Human Services Code.

(2) Effective July 1, 2022 any rule reference to the Department of Health or the Department of Human Services will refer to the Department of Health and Human Services.

KEY: administrative procedures, health administration
Date of Last Change: July 1, 2022
Authorizing, and Implemented or Interpreted Law: 26B-1-103; 26B-1-202

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R164-1**	**Filing ID: 54309**
Effective Date:	**06/27/2022**	

Agency Information

1. Department:	Commerce	
Agency:	Securities	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146760	
City, state and zip:	Salt Lake City, UT 84114-6760	
Contact person(s):		
Name:	**Phone:**	**Email:**
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R164-1. Fraudulent Practices of Broker-Dealers, Broker-Dealer Agents, and Issuer-Agents

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Subsection 61-1-24(1)(a) of the Utah Uniform Securities Act (Act), which authorizes the Division of Securities to make, amend, or rescind a rule when necessary to carry out the chapter. Under Subsection 61-1-1(3) of the Act, it is unlawful for a person to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Pursuant to Subsection 61-1-24(1)(a), this rule identifies specific acts and practices that are deemed fraudulent under Subsection 61-1-1(3).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule assists licensees, the public, and courts in interpreting "act, practice, or course of business which operates or would operate as a fraud upon any person". The list is not all-inclusive but provides examples of conduct deemed to be fraudulent in nature. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	**Date:**	06/27/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R164-4**	**Filing ID: 50341**
Effective Date:	**06/27/2022**	

Agency Information

1. Department:	Commerce	
Agency:	Securities	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146760	
City, state and zip:	Salt Lake City, UT 84114-6760	
Contact person(s):		
Name:	**Phone:**	**Email:**
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R164-4. Licensing Requirements

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Section 61-1-4 and Subsection 61-1-24(1)(a) of the Utah Uniform Securities Act (Act). Subsection 61-1-24(1)(a) authorizes the Division of Securities (Division) to make, amend, or rescind a rule when necessary to carry out the chapter. Section 61-1-4 of the Act provides general licensing and notice filing procedures and authorizes the Division to augment those requirements by rule or order.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Act requires that to act as a broker-dealer, broker-dealer agent, issuer agent, investment adviser, or investment adviser representative, a person must be appropriately licensed. Rule R164-4 describes the procedures and requirements for obtaining the appropriate licenses. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	**Date:**	06/27/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R164-5**	**Filing ID: 50327**
Effective Date:	**06/27/2022**	

Agency Information

1. Department:	Commerce	
Agency:	Securities	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146760	
City, state and zip:	Salt Lake City, UT 84114-6760	
Contact person(s):		
Name:	**Phone:**	**Email:**
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R164-5. Broker-Dealer and Investment Adviser Books and Records

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Subsection 61-1-24(1)(a) of the Utah Uniform Securities Act (Act), which authorizes the Division of Securities (Division) to make, amend, or rescind a rule when necessary to carry out the chapter. Section 61-1-5 of the Act provides postlicensing recordkeeping requirements for licensees and authorizes the Division to identify, through rulemaking, books and records to be maintained by licensees.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule assists licensees by identifying specific books, records, financial reports and other information that must be maintained by Division licensees. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	**Date:**	06/27/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R164-6**	**Filing ID: 50331**
Effective Date:	**06/27/2022**	

Agency Information

1. Department:	Commerce	
Agency:	Securities	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146760	
City, state and zip:	Salt Lake City, UT 84114-6760	
Contact person(s):		
Name:	**Phone:**	**Email:**
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R164-6. Denial, Suspension or Revocation of a License
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Subsection 61-1-24(1)(a) of the Utah Uniform Securities Act (Act), which authorizes the Division of Securities (Division) to make, amend, or rescind a rule when necessary to carry out the chapter. Section 61-1-6 of the Act sets forth grounds upon which the Division may sanction a licensee, including denial, suspension, or revocation of a license.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The grounds for the Division taking disciplinary action under Section 61-1-6 of the Act including engaging in "dishonest or unethical practices in the securities business." This rule assists licensees, the public and courts in interpreting "dishonest or unethical practices" by identifying specific acts deemed to be dishonest or unethical. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	**Date:**	06/27/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R164-18**	**Filing ID: 50336**
Effective Date:	**06/27/2022**	

Agency Information

1. Department:	Commerce	
Agency:	Securities	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146760	
City, state and zip:	Salt Lake City, UT 84114-6760	
Contact person(s):		
Name:	**Phone:**	**Email:**
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R164-18. Procedures

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Subsection 61-1-24(1)(a) of the Utah Uniform Securities Act (Act), which authorizes the Division of Securities (Division) to make, amend, or rescind a rule when necessary to carry out the chapter. Section 63G-4-202 of the Utah Administrative Procedures Act provides that an agency may by rule designate categories of adjudicative proceedings to be conducted informally. Section 63G-4-203 sets forth the procedures for such informal proceedings. Pursuant to that authority, this rule designates those categories of adjudicative proceedings that will be conducted on an informal basis.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R164-18 provides information for licensees and the public as to which actions will be conducted on an informal basis and should be continued. This rule helps licensees and the public understand the procedures used in various actions taken by the Division. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	**Date:**	06/27/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R164-25**	**Filing ID: 50342**
Effective Date:	**06/27/2022**	

Agency Information

1. Department:	Commerce
Agency:	Securities
Building:	Heber M Wells
Street address:	160 E 300 S
City, state and zip:	Salt Lake City, UT 84111-2316
Mailing address:	PO Box 146760
City, state and zip:	Salt Lake City, UT 84114-6760

Contact person(s):		
Name:	**Phone:**	**Email:**
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R164-25. Record of Registration
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Subsections 61-1-24(1)(a) and 61-1-25(5) of the Utah Uniform Securities Act (Act). Subsection 61-1-24(1)(a) authorizes the Division of Securities (Division) to make, amend, or rescind a rule when necessary to carry out the chapter. Subsection 61-1-25(5) authorizes the Division to issue an interpretive opinion of provisions contained in the Act when requested by an interested person.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule assists licensees and the public in understanding the Act by providing guidelines and procedures for requesting interpretive opinions and no-action letters from the Division. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	**Date:**	06/27/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R277-401**	**Filing ID: 50400**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education

Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R277-401. Child Abuse-Neglect Reporting by Education Personnel
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and Section 62A-4a-403 which requires individuals to report suspected child abuse or neglect to appropriate authorities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because this rule establishes procedures for reporting child abuse to authorities and the proper training to ensure this is done correctly. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/03/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R277-608**	**Filing ID: 50507**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R277-608. Prohibition of Corporal Punishment in Utah's Public Schools
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and Sections 53G-8-301 through 53G-8-305 which provide guidelines for the use of reasonable and necessary physical restraint or force in educational settings.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because this rule establishes procedures for policy requirements regarding the prohibition of corporal punishment in schools. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/03/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-2**	**Filing ID: 53043**
Effective Date:	**06/22/2022**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	3rd Floor	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jake VanderLaan	801-536-4350	jvander@utah.gov
Judy Etherington	801-536-4344	jetherington@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R317-2. Standards of Quality for Waters of the State

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Title 19, Chapter 5, the Utah Water Quality Act. Subsection 19-5-104(3)(b) authorizes the Utah Water Quality Board to adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses. Subsection 19-5-104(1) authorizes the Board to make rules which implement or effectuate the powers and duties of the Board.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

This rule is routinely amended to adopt, modify, or repeal water quality standards as appropriate. It has been amended twice since the last five-year review. All amendments are subject to public comment. Public comments received during those rulemaking actions since the last five-year review addressed technical issues specific to those amendments. The Division of Water Quality (Division) has not received written comments since the last five-year review specifically supporting or opposing this rule on the whole. Comments received during hearings and the public comment periods for rule changes have been addressed through preparation of responsiveness summaries by the Division staff and have been presented to the Water Quality Board for their consideration during the rulemaking process.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule classifies waters of the state according to their beneficial uses and sets numerical standards of quality for those waters. The Division has not received written comments since the last five-year review opposing this rule. This rule is essential to the implementation of water quality protection programs under the Utah Water Quality Act and compliance with the federal Clean Water Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	John K. Mackey, Interim Division Director	**Date:**	06/22/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-6**	**Filing ID: 50783**
Effective Date:	**06/21/2022**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Danielle Lenz	385-363-8250	dlenz@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-6. Ground Water Quality Protection
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 19-5-104(3)(a) authorizes the Utah Water Quality Board (Board) to develop programs for the prevention, control, and abatement of new or existing pollution of waters of the state. Section 19-5-105 authorizes the Board to make rules which implement or effectuate the powers and duties of the Board.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received regarding this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required for the Water Quality Director and Board to implement the state's Ground Water Protection Program. This rule is necessary as it provides ground water quality standards; defines ground water classes and protection levels; and sets minimum requirements for ground water discharge permits and corrective action. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	John K. Mackey, Interim Division Director	**Date:**	06/21/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-10**	**Filing ID: 50775**
Effective Date:	**06/21/2022**	

Agency Information

1. Department:	Environmental Quality
Agency:	Water Quality
Room no.:	Third Floor
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 144870
City, state and zip:	Salt Lake City, UT 84114-4870

Contact person(s):		
Name:	**Phone:**	**Email:**
Judy Etherington	801-536-4344	jetherington@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-10. Certification of Wastewater Works Operators
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 19-5-104(2) authorizes the Utah Water Quality Board (Board) to adopt and enforce rules and establish fees to cover the costs of managing the certification and testing program; and testing for certification of operators of treatment works and sewerage systems operated by political subdivisions. Basic criteria are given in the statute for establishing the rules, but the specifics are not given. This rule is needed to identify that criteria and establish the system for evaluating and issuing appropriate certifications for the proper operation of the regulated treatment works and sewerage systems.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There was one amendment since the last five-year review. That amendment removed the option of those who failed a certification exam to see and review the specific questions and answers that they had missed. A couple of written comments were received from individuals who opposed that change. However, due to the circumstances of evidence that the test questions had previously been compromised during a review, and that no other certifying authorities that the Division of Water Quality were aware of allowed for review of specific questions, subsequently, the amendment was not modified and was adopted by the Board without any change in language.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required to provide more detailed descriptions of the specific requirements for wastewater treatment works and collection systems as the Board implements the state's Wastewater Operator Certification Program as directed by the Water Quality Act. The certification program is established to assist in protecting the quality of waters in the state; protect the public health and the environment; provide for the health and safety of wastewater works operators; and establish standards and

methods whereby wastewater works operating personnel can demonstrate competency. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	John K. Mackey, Interim Division Director	**Date:**	06/21/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-100**	**Filing ID: 50792**
Effective Date:	**06/21/2022**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	3rd Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	**Phone:**	**Email:**
Judy Etherington	801-536-4344	jetherington@utah.gov
Harry Campbell	385-501-9583	hcampbell@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-100. Utah State Project Priority System for the Utah Wastewater Project Assistance Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is necessary to meet requirements of the Federal Water Quality Act, 40 CFR 35.3115, and Section 19-5-104 of the Utah Code. This rule defines a Project Priority System to prioritize projects to allocate wastewater revolving loan and grant funds which may be available through the state and federal governments. The priority system is intended to identify those projects which will remedy the most severe water quality problems and to provide funds for the most beneficial program for public health protection and water quality improvement.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule establishes a method for the dispersing of state and federal funds to those projects that maximize the benefit for protection of public health and water quality improvement. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	John K. Mackey, Interim Division Director	**Date:**	06/21/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R359-1**	**Filing ID: 52583**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Governor	
Agency:	Economic Opportunity, Pete Suazo Utah Athletic Commission	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state and zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	**Phone:**	**Email:**
Dane Ishihara	801-792-8764	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R359-1. Pete Suazo Utah Athletic Commission Act Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 63N-10-202 requires the Pete Suazo Utah Athletic Commission to enact rules to administer the Pete Suazo Utah Athletic Commission Act.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is authorized and mandated by state law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Dane Ishihara, Director Office of Regulatory Relief	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R414-15**	**Filing ID: 50970**
Effective Date:	**06/21/2022**	

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143101	
City, state and zip:	Salt Lake City, UT 84114-3101	
Contact person(s):		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R414-15. Residents Personal Needs Fund

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules, which include the provision of long-term care services to facility residents. In addition, 42 CFR 483.10(ii)(B) requires facilities to deposit resident funds over $50 in a separate interest-bearing account.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department did not receive any written comments regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department has determined that this rule is necessary because it requires long-term care facilities to manage and safeguard a resident's personal funds. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	**Date:**	06/21/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R414-514**	**Filing ID: 51006**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143101	
City, state and zip:	Salt Lake City, UT 84114-3101	
Contact person(s):		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R414-514. Requirements for Moratorium Exception
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Section 26-18-503, which allows the Department of Health (Department) to renew, transfer, or increase Medicaid-certified programs. Additionally, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules, and Section 26-1-5 grants the Department the authority to adopt these rules for implementation.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department did not receive any written comments regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department has determined that this rule is necessary because it implements requirements that a Medicaid-certified nursing facility program must meet for certification of additional nursing care facility programs, or for certification of additional beds within an existing nursing care facility program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R510-100**	**Filing ID: 54291**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Health and Human Services
Agency:	Aging and Adult Services
Building:	Cannon Building
Street address:	288 N 1460 W
City, state and zip:	Salt Lake City, UT 84116

Contact person(s):		
Name:	**Phone:**	**Email:**
Jean Boyack	801-538-4263	jboyack@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Jacob Murakami	385-222-1755	jmurakami@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R510-100. Funding Formulas
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule establishes funding formulas for the allocation of funds to local area agencies for the services and programs. This rule is authorized by Section 62A-3-108 and 45 CFR 1321.37.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is essential as it establishes funding formulas for the allocation of funds to local area agencies for the services and programs. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Deputy Director	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R510-104**	**Filing ID: 51198**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Health and Human Services

Agency:	Aging and Adult Services	
Building:	Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jean Boyack	801 538-4263	jboyack@utah.gov
Jonah Shaw	385 310-2389	jshaw@utah.gov
Jacob Murakami	385-222-1755	jmurakami@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R510-104. Nutrition Programs for the Elderly (NPE)
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Section 62A-3-104; and 42 USC Section 3001.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
One public comment was received 03/03/2022 concerning the update to Rule R510-104. The Department of Health and Human Services (Department) has reviewed and approved the addition of "if required by applicable local law" in regards to the paid and volunteer staff having a valid food handler permit. The Department revised this rule to show that as published in the June 15, 2022, Bulletin.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is essential as it explains and clarifies the senior nutrition programs administered in Utah, clarifying nutritional requirements. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Deputy Director	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R510-200**	**Filing ID: 54294**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Health and Human Services	
Agency:	Aging and Adult Services	
Building:	Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jean Boyack	801-538-4263	jboyack@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Jacob Murakami	385-222-1755	jmurakami@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R510-200. Long-Term Care Ombudsman Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Section 62A-1-111; Title 62a, Chapter 3, Part 2, Long-Term Care Ombudsman Program; and the Older Americans Act of 1965, 42 U.S.C. 3058g.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The purpose of this rule is to facilitate the administration of the Long-Term Care Ombudsman Program, established pursuant to Title 62a, Chapter 3, Part 2, Long-Term Care Ombudsman Program and the Older Americans Act of 1965, 42 U.S.C. 3058g. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Deputy Director	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R510-302**	**Filing ID: 53036**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Health and Human Services	
Agency:	Aging and Adult Services	
Building:	Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jean Boyack	801 538-4263	jboyack@utah.gov
Jonah Shaw	385 310-2389	jshaw@utah.gov
Jacob Murakami	385-222-1755	jmurakami@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R510-302. Adult Protective Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Section 62A-3-302.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule clarifies the responsibilities of Adult Protective Services. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Deputy Director	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R510-400**	**Filing ID: 54295**
Effective Date:	**06/29/2022**	

Agency Information

1. Department:	Health and Human Services	
Agency:	Aging and Adult Services	
Building:	Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Jean Boyack	801 538-4263	jboyack@utah.gov
Jonah Shaw	385 310-2389	jshaw@utah.gov
Jacob Murakami	385-222-1755	jmurakami@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R510-400. Home and Community Based Alternatives Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Section 62A-1-111 and the Older Americans Act of 1965, 42 U.S.C. 3030d(a)(5). The purpose of this rule is to facilitate the administration of the Home and Community Based Alternatives Program (Alternatives Program), which delivers services in a variety of community settings designed to assist older individuals in avoiding institutionalization and ensuring that their social and medical needs are met.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is essential and facilitates the administration of the Home and Community Based Alternatives Program (Alternatives Program), which delivers services in a variety of community settings designed to assist older individuals in avoiding institutionalization and ensuring that their social and medical needs are met. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Deputy Director	**Date:**	06/29/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-148**	**Filing ID: 51363**
Effective Date:	**06/30/2022**	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R590-148. Long-Term Care Insurance Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code. Section 31A-22-1404 authorizes the insurance commissioner to write rules to permit or include standards for full and fair disclosure of the manner, content, and required disclosures for the sale of long-term insurance policies.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department of Insurance (Department) has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is a major protection to the consumer. The Department has incorporated a rate stability requirement approved by the industry through the NAIC. As Utah's population ages, the Department will need better guidance and protections for the aging. This rule will provide better understanding of products being sold. This rule requires better analysis by the producer regarding the suitability of the product they are selling to an individual. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/30/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-173**	**Filing ID: 54524**
Effective Date:	**06/21/2022**	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R590-173. Credit for Reinsurance
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department of Insurance has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule sets forth requirements that are necessary to enact Section 31A-17-404. Credit for reinsurance has relevance for many Utah insurance companies and may be a significant factor in establishing their solvency position. This rule lays out the detailed requirements that apply to this important area. It provides protection to the ceding insurers within the state of Utah and to the individuals insured. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/21/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-241**	**Filing ID: 54483**
Effective Date:	**06/30/2022**	

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901
Contact person(s):	

Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R590-241. Preferred Mortality Tables to Determine Minimum Reserve Liabilities
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code. Section 31A-17-402 requires the insurance commissioner to write rules to specify the liabilities required to be reported by an insurer in a financial statement and to set the methods of valuing these liabilities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department of Insurance has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule was developed to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities. Without this rule, insurance companies would have to raise reserves held in support of the preferred business which, in turn, would require them to raise rates for the best risks. This rule enables more equitable pricing of life insurance policies. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/30/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-264**	**Filing ID: 51437**
Effective Date:	**06/30/2022**	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R590-264. Property and Casualty Actuarial Opinion Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code. Section 31A-4-113 requires every insurer to file annually a true statement of its financial condition.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department of Insurance has received no written comments regarding this rule during the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule requires all property and casualty insurers to prepare annually the Actuarial Opinion Summary, a document intended to aid regulators in understanding the financial condition of the company. This rule also allows the insurer to request that this document be kept confidential. This rule implements a regulatory requirement that is a part of the NAIC accreditation standards (NAIC Property and Casualty Actuarial Opinion Model Law, #745). NAIC accreditation allows non-domestic states to rely on the accredited domestic regulator to fulfill a baseline level of effective financial regulatory oversight. Maintaining accreditation is vital for the state of Utah and its domestic companies. The Statement of Actuarial Opinion and the Actuarial Opinion Summary are essential regulatory tools needed to assess the financial condition of the insurer. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	06/30/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-1**	**Filing ID: 54392**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission	
Agency:	Occupational Safety and Health	
Room no.:	3rd Floor	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R614-1. General Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety

and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This specific rule establishes definitions, incorporates federal standards, establishes other basic safety rules and addresses inspections, confidentiality of information and penalties. This rule remains necessary to implement the legislative intent underlying the enactment of the Utah Occupational Safety and Health Act, set forth in Section 34A-6-102, of providing for the safety and health of workers and establishing a coordinated state plan as effective as the Federal Occupational Safety and Health program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-2**	**Filing ID: 51502**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission
Agency:	Occupational Safety and Health
Room no.:	3rd Floor
Building:	Heber M Wells Building
Street address:	160 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 146600
City, state and zip:	Salt Lake City, UT 84114-6600

Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R614-2. Drilling Industry
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to establish specific safety and health standards in the drilling industry and related services. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-3**	**Filing ID: 51504**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission
Agency:	Occupational Safety and Health
Room no.:	3rd Floor

Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R614-3. Farming Operations Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to establish specific safety and health standards in farming operations and the safety of employees. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-4**	**Filing ID: 51505**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission	
Agency:	Occupational Safety and Health	
Room no.:	3rd Floor	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R614-4. Hazardous Materials
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to establish specific safety standards for hazardous materials and the safety of employees working with them. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-5**	**Filing ID: 51506**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission	
Agency:	Occupational Safety and Health	
Room no.:	3rd Floor	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R614-5. Materials Handling and Storage

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received since the last five year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to establish specific safety standards for conveyors and the safety of employees using them. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-6**	**Filing ID: 51511**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission	
Agency:	Occupational Safety and Health	
Room no.:	3rd Floor	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R614-6. Other Operations

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received since the last five year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule identifies safety procedures for operations such as "crushing, screening, and grinding equipment", "window cleaning", and "industrial railroads" (items that are not covered by Federal standards). This rule is necessary to ensure the safety of employees in workplaces that involve these operations. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R614-7**	**Filing ID: 51513**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Labor Commission
Agency:	Occupational Safety and Health
Room no.:	3rd Floor
Building:	Heber M Wells Building
Street address:	160 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 146600
City, state and zip:	Salt Lake City, UT 84114-6600

Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Hill	801-530-6113	chill@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R614-7. Construction Standards

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received since the last five year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to establish specific safety standards for operations in hazardous construction areas such as "roofing," "tar-asphalt operations," and the protection of employees engaged in these operations. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jaceson R. Maughan, Commissioner	**Date:**	06/24/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R651-410**	**Filing ID: 51635**
Effective Date:	**06/24/2022**	

Agency Information

1. Department:	Natural Resources
Agency:	Parks and Recreation

Street address:	1594 W North Temple, Suite 100	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chase Pili	801-707-5359	cpili@utah.gov
Shane Stroud	385-499-0599	sstroud@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R651-410. Off-Highway Vehicle Safety Equipment
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 41-22-10.7, a safety flag is required for any OHV operated on sand dunes designated by the Division of Parks and Recreation (Division). In addition, Subsection 41-22-10.7(1)(d)(i)(ii)(iii)(a)(b) states that a safety flag is: red or orange in color; a minimum of 6 by 12 inches; and attached to: the off-highway vehicle so that the safety flag is at least eight feet above the surface of level ground; or the protective headgear of a person operating a motorcycle so that safety flag is at least 18 inches above the top of the person's head.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division has not received any written comments during the last five years that are either in support of opposed to this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Subsection 41-22-10.7 (1)(d) authorizes the Division to designate the sand dunes in which a safety flag is required. This rule is necessary in order to remain compliant with Utah State Code and consistency of safety equipment within our sand dunes. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Chase Pili, OHV Program Manager	**Date:**	06/22/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R918-3**	**Filing ID: 52112**
Effective Date:	**06/22/2022**	

Agency Information

1. Department:	Transportation	
Agency:	Operations, Maintenance	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R918-3. Snow Removal
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is enacted under the general rulemaking authority in Section 72-1-201.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Utah Department of Transportation (Department) has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is to indicate where and when the Department will provide snow removal services. For safety purposes, the public and local governments need to have the information included in this rule. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/22/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R918-6**	**Filing ID: 52119**
Effective Date:	**06/23/2022**	

Agency Information

1. Department:	Transportation	
Agency:	Operations, Maintenance	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R918-6: Maintenance Responsibility at Intersections, Overcrossings, and Interchanges between Class A Roads and Class B or Class C Roads
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Sections 72-1-201, 72-3-102, 72-3-103, 72-3-104, 72-1-208, 72-3-109, and 72-6-105 authorize the Department of Transportation (Department) to make this rule.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides for procedures for the Department to assign maintenance responsibility for Class A, B, and C Roads (state roads), it also directs the Department to cooperate with counties and municipalities in the maintenance of highways and allows the Department to provide maintenance services to them under terms mutually agreed upon. In addition, this rule delineates the Division of Operations, Maintenance of responsibilities for state highways within cities and towns and provides that the Department may enter into written agreements with counties and municipalities for the maintenance of any highway. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/23/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R920-1**	**Filing ID: 52120**
Effective Date:	**06/22/2022**	

Agency Information

1. Department:	Transportation
Agency:	Operations, Traffic and Safety

Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R920-1. Utah Manual on Uniform Traffic Control Devices
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized and required by Sections 41-6a-301, 41-6a-303, and 41-6a-1307.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department of Transportation (Department) has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides legal authority and procedures the Department must follow to adopt standards and establish specifications for a uniform system of traffic-control devices used on all highways open to public travel, to establish criteria and specifications for the establishment, location, and operation of school crosswalks, school zones, and reduced speed school zones, and to establish specifications for uniform signage or markings to clearly identify school bus parking zones. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/22/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R920-2**	**Filing ID: 52121**
Effective Date:	**06/23/2022**	

Agency Information

1. Department:	Transportation	
Agency:	Operations, Traffic, and Safety	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R920-2. Rural Conventional Road Definition

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 72-7-504 authorizes the Department of Transportation (Department) to adopt standards and establish specifications for the definition of rural conventional roads.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule adopts and establishes standards and specifications for roads in rural areas, communities, and unincorporated counties not within the boundaries of urbanized areas and urban clusters. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/23/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R920-4**	**Filing ID: 52123**
Effective Date:	**06/23/2022**	

Agency Information

1. Department:	Transportation	
Agency:	Operations, Traffic and Safety	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R920-4. Special Road Use or Event
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Sections 72-1-201, 72-1-212, and 41-6a-1111 authorize the Department of Transportation (Department) to make this rule.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides legal authority and procedures the Department follows to: (a) ensure the right of Utahns and visitors to speak and protest in public forums and other public places owned or maintained by the Department; (b) encourage and support special events such as parades, runs and walks, bicycle races, and film-related activities, recognizing their importance to Utah's economy and to the wellbeing of residents of and visitors to Utah; (c) manage limited resources and multiple requests for the use of the same roadways in a responsible and content-neutral manner; (d) encourage collaboration with local governments in the review and management of Special Road Uses; (e) provide guidelines and an appeal process for the review of applications for special road use permits; and (f) set reasonable time, place, and manner restrictions for the safe use of roadways for free speech events, and set reasonable requirements on other special events on highways and land under the jurisdiction of the Department to protect public safety, persons, and property, and to accommodate the interests of persons not participating in the assemblies to use the roadways for travel. Absent such a rule, rights of free speech and the safety of the traveling public would be undermined.

Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/23/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R920-6**	**Filing ID: 52467**
Effective Date:	**06/22/2022**	

Agency Information

1. Department:	Transportation	
Agency:	Operations, Traffic and Safety	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R920-6. Traction Device/Tire Chain Requirements

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 72-1-201 establishes the Utah Department of Transportation (UDOT) and states that UDOT shall provide have general responsibility for planning, research, design, construction, maintenance, security and safety of state transportations systems. This establishes UDOT as a highway authority. Section 41-6a-715 says that a highway authority may restrict traffic on a highway to specific vehicle of capabilities due to weather conditions for safe movement of traffic.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

UDOT received comments that were specific to the operation of this rule in Cottonwood Canyons. Several commenters indicated they would like to see the traction law in effect throughout the winter season, rather than only when required by weather conditions.

There were also comments that this rule should be better enforced. In general, the comments received were supportive of traction device requirements.

UDOT also answered a question regarding how the weight threshold was determined that led to UDOT determining that the 12,000 GVW threshold between heavy vehicles and light trucks/cars would be easier to explain and enforce if it were modified to a higher threshold that looks at GVWR (Gross Vehicle Weight Rating) instead of GVW (Gross Vehicle Weight).

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Traction Device/Tire Chain Requirements are an effective tool that UDOT uses to keep roads open under adverse weather conditions. Without this tool to manage traffic, UDOT expects that roads would be more frequently blocked by vehicles with insufficient traction in snowy conditions.

UDOT does not intend to modify this rule to require traction devices be carried in vehicles throughout the winter season. This requirement to carry chains when the weather is good weather is difficult to enforce and it places an unreasonable burden on persons driving the road on a day when the weather is good and will remain good.

UDOT will propose an update to this rule that replaces the GVW with a GVWR that reflects current GVWR ratings of light trucks.

Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/22/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R920-50**	**Filing ID: 52128**
Effective Date:	**06/22/2022**	

Agency Information

1. Department:	Transportation
Agency:	Operations, Traffic and Safety
Room no.:	Administrative Suite, 1st Floor
Building:	Calvin Rampton
Street address:	4501 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 148455
City, state and zip:	Salt Lake City, UT 84114-8455
Contact person(s):	

Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R920-50. Ropeway Operation Safety

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 72-11-102(11) authorizes the Department of Transportation (Department) to make this rule.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department received numerous written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule. The comments provide constructive suggestions about how to improve this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	**Date:**	06/22/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-401**	**Filing ID: 54679**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services
Agency:	Administration
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244
City, state and zip:	Salt Lake City, UT 84145-0244
Contact person(s):	

Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R982-401. Energy Assistance: General Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance

Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth program standards, eligibility criteria, and rights of review for the HEAT Program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-402**	**Filing ID: 54680**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R982-402. Energy Assistance Program Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth program standards and eligibility criteria for the HEAT Program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-403**	**Filing ID: 54681**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services
Agency:	Administration
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111

Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R982-403. Energy Assistance Income Standards, Income Eligibility, and Payment Determination
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth standards for eligibility and payment determinations for the HEAT Program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-404**	**Filing ID: 54670**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R982-404. Energy Assistance: Asset Standards
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth standards for counting household assets when determining eligibility for the HEAT Program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-405**	**Filing ID: 54671**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R982-405. Energy Assistance: Program Benefits
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth standards for determining when HEAT Program benefits may be paid. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-406**	**Filing ID: 54672**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R982-406. Energy Assistance: Eligibility Determination

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received during the last five years or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to set forth procedures for reviewing HEAT Program applications and determining eligibility. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-407**	**Filing ID: 54673**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services
Agency:	Unemployment Insurance
Building:	Administration
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244
City, state and zip:	Salt Lake City, UT 84145-0244

Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:

R982-407. Energy Assistance: Records and Benefit Management

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received during the last five years or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to set forth standards for handling HEAT Program records and payments. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-408**	**Filing ID: 54674**
Effective Date:	**06/17/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R982-408. Energy Assistance: Special State Programs

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The federal Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 et seq., as amended, and its accompanying regulations, 45 CFR 96.80 et seq., provide grants to the states for subsidies for certain low-income individuals and households in need of assistance in paying their home energy costs. In response, the Utah Legislature has passed the Home Energy Assistance Target (HEAT) Program Act, Section 35A-8-1401 et seq., which authorizes the Department of Workforce Services (Department) to administer the HEAT Program in accordance with the above-cited federal authorities. Section 35A-8-1403 specifically authorizes the Department to make rules setting forth the eligibility criteria for the HEAT Program.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received during the last five years or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to set forth standards for administering and enforcing the shutoff moratorium for eligible individuals. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/17/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R982-501**	**Filing ID: 52189**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Administration	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R982-501. Olene Walker Housing Loan Fund (OWHLF)

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Olene Walker Housing Loan Fund was created by statute (Section 35A-8-501 et seq.) to allocate and distribute funds to rehabilitate and develop housing for lower-income Utahns. Section 35A-8-504 authorizes the executive director of the Department of Workforce Services to make rules to establish procedures for grants and loans made by the fund.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received during the last five years or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set standards ensuring that grants and loans made by the fund are made in accordance with state law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/28/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R990-8**	**Filing ID: 53437**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R990-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Mineral Leasing Act of 1920, 30 U.S.C. 191, as amended, provides for states to receive revenue from federal mineral leases. Consistent with the act, the Utah Legislature has created the Permanent Community Impact Fund and the Permanent Community Impact Fund Board to administer and distribute these revenues (see Section 35A-8-301 et seq.). The impact board has rulemaking authority under Section 35-8-306.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth standards and procedures for evaluating applications for funding and administering the impact fund in accordance with federal and state law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/28/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R990-9**	**Filing ID: 52211**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R990-9. Policy Concerning Enforceability and Taxability of Bonds Purchased
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Mineral Leasing Act of 1920, 30 U.S.C. 191, as amended, provides for states to receive revenue from federal mineral leases. Consistent with the act, the Utah Legislature has created the Permanent Community Impact Fund and the Permanent Community Impact Fund Board to administer and distribute these revenues (see Section 35A-8-301 et seq.). Section 35A-8-307 requires the impact board to consider a political subdivision's bonded indebtedness and availability of bonds in the course of determining whether to provide funding. The impact board has rulemaking authority under Section 35-8-306.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth standards for the use of bonds in providing funding to political subdivisions as required under state law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/28/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R990-10**	**Filing ID: 52207**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Workforce Services
Agency:	Housing and Community Development
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244
City, state and zip:	Salt Lake City, UT 84145-0244
Contact person(s):	

Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R990-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The federal Mineral Leasing Act of 1920, 30 U.S.C. 191, as amended, provides for states to receive revenue from federal mineral leases. Consistent with the act, the Utah Legislature has created the Permanent Community Impact Fund and the Permanent Community Impact Fund Board to administer and distribute these revenues (see Section 35A-8-301 et seq.). The impact board has rulemaking authority under Section 35-8-306.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set forth procedures for review of impact board decisions. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/28/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R990-100**	**Filing ID: 52294**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R990-100. Community Services Block Grant Rules
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Pursuant to the federal Community Services Block Grant Act, 42. U.S.C. 9901 et seq., as amended, and its accompanying regulations, 45 CFR 96.1 et seq., the Utah Legislature passed the State Community Services Act, Section 35A-8-1001 et seq. The State Community Services Act creates the State Community Services Office and authorizes the office to administer funds made available to the state under the above-referenced federal authorities. Section 35A-8-1004 authorizes the state office to make rules for this purpose.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to administer Community Services Block Grant funds in accordance with state and federal law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/28/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R990-101**	**Filing ID: 52602**
Effective Date:	**06/28/2022**	

Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R990-101. Qualified Emergency Food Agencies Fund (QEFAF)
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 35A-8-1009 creates the Qualified Emergency Food Agencies Fund (QEFAF) and authorizes the Department's Housing and Community Development Division to make rules regarding standards for the distribution of funds to qualified emergency food agencies.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received during the last five years or since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set standards and procedures for the distribution of QEFAF funds and applications for those funds. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	**Date:**	06/28/2022

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food
Plant Industry
No. 54541 (Amendment) R68-9: Utah Noxious Weed Act
Published: 05/15/2022
Effective: 06/21/2022

No. 54513 (Amendment) R68-10: Quarantine Pertaining to the European Corn Borer
Published: 05/01/2022
Effective: 06/21/2022

Career Service Review Office
Administration
No. 54540 (Amendment) R137-1: Grievance Procedure Rules
Published: 05/15/2022
Effective: 07/01/2022

Cultural and Community Engagement
Arts and Museums
No. 54415 (Amendment) R451-1: Arts and Museums General Program Rules
Published: 04/01/2022
Effective: 06/29/2022

No. 54416 (Amendment) R451-2: Policy for Commissions, Purchases, Deaccessioning, Donations to, and Loans from, the State of Utah Alice Merrill Horne Art Collection
Published: 04/01/2022
Effective: 06/29/2022

Environmental Quality
Air Quality
No. 54498 (Amendment) R307-110: General Requirements: State Implementation Plan
Published: 05/01/2022
Effective: 07/07/2022

No. 54502 (Amendment) R307-511: Oil and Gas Industry: Associated Gas Flaring
Published: 05/01/2022
Effective: 07/07/2022

Government Operations
Human Resource Management
No. 54556 (Amendment) R477-1: Definitions
Published: 05/15/2022
Effective: 07/01/2022

No. 54557 (Amendment) R477-2: Administration
Published: 05/15/2022
Effective: 07/01/2022

No. 54558 (Amendment) R477-3: Classification
Published: 05/15/2022
Effective: 07/01/2022

No. 54559 (Amendment) R477-4: Filling Positions
Published: 05/15/2022
Effective: 07/01/2022

No. 54560 (Amendment) R477-5: Employee Status and Probation
Published: 05/15/2022
Effective: 07/01/2022

No. 54561 (Amendment) R477-6: Compensation
Published: 05/15/2022
Effective: 07/01/2022

No. 54562 (Amendment) R477-7: Leave
Published: 05/15/2022
Effective: 07/01/2022

No. 54563 (Amendment) R477-8: Working Conditions
Published: 05/15/2022
Effective: 07/01/2022

No. 54564 (Amendment) R477-9: Employee Conduct
Published: 05/15/2022
Effective: 07/01/2022

No. 54565 (Amendment) R477-10: Employee Development
Published: 05/15/2022
Effective: 07/01/2022

No. 54566 (Amendment) R477-11: Discipline
Published: 05/15/2022
Effective: 07/01/2022

No. 54567 (Amendment) R477-12: Separations
Published: 05/15/2022
Effective: 07/01/2022

No. 54568 (Amendment) R477-13: Volunteer Programs
Published: 05/15/2022
Effective: 07/01/2022

No. 54569 (Amendment) R477-14: Substance Abuse and Drug-Free Workplace
Published: 05/15/2022
Effective: 07/01/2022

No. 54570 (Amendment) R477-15: Workplace Harassment Prevention
Published: 05/15/2022
Effective: 07/01/2022

No. 54571 (Amendment) R477-16: Abusive Conduct Prevention
Published: 05/15/2022
Effective: 07/01/2022

No. 54572 (Amendment) R477-101: Administrative Law Judge Conduct Committee
Published: 05/15/2022
Effective: 07/01/2022

Health and Human Services
Administration (Health)
No. 54590 (Repeal) R380-10: Informal Adjudicative Proceedings
Published: 05/15/2022
Effective: 07/01/2022

Children's Health Insurance Program
No. 54587 (Amendment) R382-1: Benefits and Administration
Published: 05/15/2022
Effective: 07/01/2022

No. 54588 (Amendment) R382-2: Electronic Personal Medical Records for the Children's Health Insurance Program
Published: 05/15/2022
Effective: 07/11/2022

Disease Control and Prevention, Environmental Services
No. 54412 (Amendment) R392-101: Food Safety Manager Certification
Published: 04/01/2022
Effective: 06/21/2022

No. 54409 (Amendment) R392-105: Agritourism Food Establishment Sanitation
Published: 04/01/2022
Effective: 06/21/2022

Family Health and Preparedness, WIC Services
No. 54399 (Repeal and Reenact) R406-100: Special Supplemental Nutrition Program for Women, Infants and Children
Published: 04/01/2022
Effective: 06/21/2022

No. 54400 (Repeal) R406-200: Program Overview
Published: 04/01/2022
Effective: 06/21/2022

No. 54401 (Repeal) R406-201: Outreach Program
Published: 04/01/2022
Effective: 06/21/2022

No. 54402 (Repeal) R406-202: Eligibility
Published: 04/01/2022
Effective: 06/21/2022

No. 54403 (Repeal) R406-301: Clinic Guidelines
Published: 04/01/2022
Effective: 06/21/2022

Health Care Financing, Coverage and Reimbursement Policy
No. 54586 (Amendment) R414-1: Utah Medicaid Program
Published: 05/15/2022
Effective: 07/01/2022

Family Health and Preparedness, Emergency Medical Services
No. 54578 (Amendment) R426-8: Emergency Medical Services Ground Ambulance Rates and Charges
Published: 05/15/2022
Effective: 07/01/2022

Administration, Administrative Hearings
No. 54592 (Amendment) R497-100: Adjudicative Proceedings
Published: 05/15/2022
Effective: 07/01/2022

Insurance
Administration
No. 54581 (Amendment) R590-102: Insurance Department Fee Payment Rule
Published: 05/15/2022
Effective: 06/21/2022

No. 54582 (Amendment) R590-152: Health Discount Programs and Value Added Benefit Rule
Published: 05/15/2022
Effective: 06/21/2022

No. 54583 (Amendment) R590-243: Commercial Motor Vehicle Insurance Coverage
Published: 05/15/2022
Effective: 06/21/2022

No. 54584 (Amendment) R590-245: Self-Service Storage Insurance
Published: 05/15/2022
Effective: 06/21/2022

No. 54613 (New Rule) R590-288: Limited Line Producer Line of Authority for Pet Insurance
Published: 06/01/2022
Effective: 07/08/2022

Public Safety
Driver License
No. 54538 (Repeal and Reenact) R708-37: Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests
Published: 05/15/2022
Effective: 06/22/2022

No. 54539 (Amendment) R708-46: Refugee, Asylee, or Covered Humanitarian Parolee Knowledge Test in Applicant's Native Language
Published: 05/15/2022
Effective: 06/22/2022

Transportation
Administration
No. 54542 (Amendment) R907-66: Procurement of Consultant Services - Procedures and Contract Administration
Published: 05/15/2022
Effective: 06/21/2022

Workforce Services
Employment Development
No. 54576 (Amendment) R986-100: Employment Support Programs
Published: 05/15/2022
Effective: 07/01/2022

No. 54577 (Amendment) R986-300-306: Time Limits
Published: 05/15/2022
Effective: 06/21/2022

No. 54585 (Amendment) R986-700: Child Care Assistance
Published: 05/15/2022
Effective: 07/01/2022

Housing and Community Development
No. 54555 (Repeal) R990-12: State Small Business Credit Initiative Program Fund
Published: 05/15/2022
Effective: 07/01/2022

End of the Notices of Rule Effective Dates Section