

UTAH STATE BULLETIN

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

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. 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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Utah state bulletin.

Semimonthly.

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TABLE OF CONTENTS

EXECUTIVE DOCUMENTS	1
Moving the Utah COVID-19 Health Risk Status to Yellow (Low Risk) in Grand County, West Valley City, and Magna (2020/027/EO).....	2
Wildland Fire Management (2020/028/EO).....	3
Declaring a State of Emergency Due to Civil Unrest (2020/029/EO).....	4
Extending the Orange (Moderate Risk) and Yellow (Low Risk) Utah COVID-19 Health Risk Status through June 12, 2020 (2020/030/EO).....	5
Administrative Services	
Archives and Records Service	
R17-6-3. Records Storage and Disposal -- Archives Responsibility	8
Records Committee	
R35-1. State Records Committee Appeal Hearing Procedures.....	10
R35-2-2. Declining Requests for Hearings	13
R35-4. Compliance with State Records Committee Decisions and Orders	15
Education	
Administration	
R277-309. Appropriate Licensing of Teachers.....	17
Environmental Quality	
Waste Management and Radiation Control, Waste Management	
R315-270-42. Hazardous Waste Permit Program -- Permit Modification at the Request of the Permittee..	20
Financial Institutions	
Nondepository Lenders	
R343-10. Title Lenders Registration with the Nationwide Database	30
Governor	
Energy Development (Office of)	
R362-2. Administrative Rule Hearings.....	33
Human Services	
Juvenile Justice Services	
R547-13. Guidelines for Admission to Secure Youth Detention Facilities	48
Insurance	
Administration	
R590-131. Accident and Health Coordination of Benefits Rule	51
R590-237. Access to Health Care Providers in Rural Counties	58
Natural Resources	
Oil, Gas and Mining; Oil and Gas	
R649-1. Oil and Gas Definitions	61
R649-2. General Rules	66

R649-3. Drilling and Operating Practices	72
Transportation Commission	
Administration	
R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance	97
NOTICES OF CHANGES IN PROPOSED RULES.....	101
Agriculture and Food	
Plant Industry	
R68-33. Industrial Hemp Retailer Permit	102
Regulatory Services	
R70-580. Kratom Product Registration and Labeling	105
NOTICES OF 120-DAY (EMERGENCY) RULES.....	111
Health	
Health Care Financing, Coverage and Reimbursement Policy	
R414-42. Telemedicine	111
R414-60-4. Program Coverage	113
Human Services	
Services for People with Disabilities	
R539-2-5. Person-Centered Process	115
R539-3-8. Notice of Agency Action and Administrative Hearings.....	116
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION	119
Administrative Services	
Administrative Rules (Office of)	
R15-1. Administrative Rule Hearings.....	119
Facilities and Construction Management	
R23-7. State Construction Contracts and Drug and Alcohol Testing.....	120
Attorney General	
Administration	
R105-3. White Collar Crime Registry.....	120
Education	
Administration	
R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks.....	121
Human Services	
Administration	
R495-820. Institutional Review Board	121
Child and Family Services	
R512-11. Accommodation of Moral and Religious Beliefs and Culture.....	122
R512-203. Child Protective Services, Significant Risk Assessments	122
R512-308. Out-of-Home Services, Guardianship Services and Placements.....	123

Natural Resources

 Wildlife Resources

 R657-6. Taking Upland Game..... 123

 R657-11. Taking Furbearers and Trapping 124

 R657-24. Compensation for Mountain Lion, Bear, Wolf or Eagle Damage 124

 Regents (Board of)

 Administration

 R765-609. Regents' Scholarship 125

 R765-611. Veterans Tuition Gap Program 125

 Transportation

 Operations, Construction

 R916-6. Drug and Alcohol Testing in State Construction Contracts 126

 Program Development

 R923-13. Designated Scenic Byways..... 126

 R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes 127

NOTICES OF RULE EFFECTIVE DATES 129

EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER

Moving the Utah COVID-19 Health Risk Status to Yellow (Low Risk) in Grand County, West Valley City, and Magna

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

WHEREAS, the State must establish minimum standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

WHEREAS, the Utah Economic Response Task Force has prepared and updated the Utah Leads Together plan for health and economic recovery to guide the State's efforts to stabilize and reconstitute the state economy while protecting public health, including by presenting economic phases, introducing color-coded health guidance and data tools, and providing plans to assist Utah's high risk individuals and multicultural communities that have been disproportionately impacted by COVID-19;

WHEREAS, the Utah Department of Health has released and updated as an addendum to the Utah Leads Together plan the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation, which provide a color-coded health guidance system comprising four levels of activity designated as Red (High Risk), Orange (Moderate Risk), Yellow (Low Risk), and Green (Normal Risk) (hereinafter, "Utah COVID-19 Health Risk Status"), where Red is most restrictive and each level of guidance after Red becomes progressively less restrictive and more economically engaged while still protecting public health;

WHEREAS, on May 27, 2020, the Utah Department of Health released version 4.5 of the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation;

WHEREAS, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. As used in this Order, "Phased Guidelines" means the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation Version 4.5.
2. The Utah COVID-19 Public Health Risk Status is:
 - a. Orange (Moderate Risk) in Salt Lake City, the town of Bluff, and the census designated place Mexican Hat; and
 - b. Yellow (Low Risk) in all other areas of the State not identified in Subsection (2)(a).
3. The provisions of the Phased Guidelines apply as follows:
 - a. An individual or business in an area identified in Subsection (2)(a) shall comply with the Orange (Moderate Risk) provisions of the Phased Guidelines;
 - b. An individual or business in an area identified in Subsection (2)(b) shall comply with the Yellow (Low Risk) provisions of the Phased Guidelines;
 - c. Notwithstanding any other provision of this Section (3), any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
 - i. as an order with respect to:
 - A. each individual acting in the capacity as an employee of a business when the individual is unable to maintain a distance of six feet from another individual; and
 - B. each individual in a healthcare setting; and
 - ii. as a strong recommendation with respect to any individual not identified in Subsection (3)(c)(i).

4. A political subdivision desiring an exception to this Order or the Phased Guidelines shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.

5. Executive Order 2020-26 is rescinded and replaced by this Order.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on June 5, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 29th day of May, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/027/EO

EXECUTIVE ORDER

Wildland Fire Management

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

WHEREAS, spring in Utah was one of the driest on record; and

WHEREAS, wildfires are currently burning in some areas of the State;

WHEREAS, wildfire warnings are in place for all of Southern Utah; and portions of Utah's west desert

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

WHEREAS, immediate action will be required to suppress fires and mitigate post burn flash floods to protect public safety, property, natural resources and the environment should these dangerous conditions escalate to active wildfires;

WHEREAS; COVID-19 has exhausted State and Local resources and will increase the complexity of wildfire response;

WHEREAS, these conditions do create the potential for a disaster emergency within the scope of the Disaster Response and Recovery Act of 1981;

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

It is found, determined and declared that a "State of Emergency" exists Statewide due to the threat to public safety, property, critical infrastructure, natural resources and the environment, effective for the month of June 2020, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 1st day of June 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/028/EO

EXECUTIVE ORDER

Declaring a State of Emergency Due to Civil Unrest

WHEREAS, On May 31, 2020, protests took place in Salt Lake City in response to the death of an individual in police custody in Minneapolis, Minnesota;

WHEREAS, some protestors became violent and the civil unrest resulted in bodily injury and destruction of private and public property;

WHEREAS, a police car and a private vehicle were overturned by protesters and burned;

WHEREAS, some protestors engaged in looting and vandalism of businesses, including the City Creek Center and extensive defacement of the Utah State Capitol building;

WHEREAS, some office buildings and stores are closed due to the damage and the threat of further violence;

WHEREAS, law enforcement agencies from all over the State of Utah have responded to assist in controlling the violence;

WHEREAS, the Governor activated 200 National Guardsmen to assist in ensuring the safety of citizens and prevent further violence and property damage;

WHEREAS, the Mayor of Salt Lake City declared a curfew from June 1, 2020 8:00 p.m. to June 8, 2020 6:00 a.m.;

WHEREAS, there exists a possibility of future bodily injury and destruction of property due to civil unrest;

WHEREAS, these conditions do create a "State of Emergency" within the intent of the Disaster Response and Recovery Act found in Title 53, Chapter 2a of the Utah Code Annotated 1953 as amended;

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order:

1. The closure of the Utah State Capitol building and grounds to all individuals other than officers and employees of the Utah Executive Branch, the Utah Legislature, and the Utah Judiciary; and
2. Assistance from state government to political subdivisions as needed and coordinated by the Utah Department of Public Safety, and other state agencies as necessary.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on June 6, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 1st day of June, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/029/EO

EXECUTIVE ORDER

Extending the Orange (Moderate Risk) and Yellow (Low Risk) Utah COVID-19 Health Risk Status through June 12, 2020

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

WHEREAS, the State must establish minimum standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

WHEREAS, the Utah Department of Health has released and updated the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation, which provide a color-coded health guidance system comprising four levels of activity designated as Red (High Risk), Orange (Moderate Risk), Yellow (Low Risk), and Green (Normal Risk) (hereinafter, "Utah COVID-19 Health Risk Status"), where Red is most restrictive, and each level of guidance after Red becomes progressively less restrictive and more economically engaged while still protecting public health;

WHEREAS, Executive Order 2020-27 moved the Utah COVID-19 Health Risk Status to Orange (Moderate Risk) in Salt Lake City, the town of Bluff, and the census-designated place Mexican Hat, and to Yellow (Low Risk) in each other area of the state;

WHEREAS, Executive Order 2020-27 will terminate today, June 5, 2020, at 11:59 p.m.;

WHEREAS, the Utah Department of Health has determined that the Utah COVID-19 Health Risk Status set forth in Executive Order 2020-27 should be maintained to protect public health throughout the state;

EXECUTIVE ORDER

WHEREAS, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. As used in this Order, "Phased Guidelines" means the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation Version 4.5.
2. The Utah COVID-19 Public Health Risk Status is:
 - a. Orange (Moderate Risk) in Salt Lake City, the town of Bluff, and the census-designated place Mexican Hat; and
 - b. Yellow (Low Risk) in each area of the State not identified in Subsection (2)(a).
3. The provisions of the Phased Guidelines apply as follows:
 - a. An individual or business in an area identified in Subsection (2)(a) shall comply with the Orange (Moderate Risk) provisions of the Phased Guidelines;
 - b. An individual or business in an area identified in Subsection (2)(b) shall comply with the Yellow (Low Risk) provisions of the Phased Guidelines;
 - c. Notwithstanding any other provision of Section (3), any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
 - i. as an order for:
 - A. each individual acting in the capacity as an employee of a business when the individual is unable to maintain a distance of six feet from another individual; and
 - B. each individual in a healthcare setting; and
 - ii. as a strong recommendation for any individual not identified in Subsection (3)(c)(i).
4. A political subdivision desiring an exception to this Order or the Phased Guidelines shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
5. Executive Order 2020-27 is rescinded and replaced by this Order.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on June 12, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 5th day of June, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/030/EO

End of the Executive Documents Section

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 May 16, 2020, 12:00 a.m., and June 01, 2020, 11:59 p.m. are included in this, the June 15, 2020, 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 July 15, 2020. 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 October 13, 2020, 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.):	R17-6-3	Filing No. 52792

Agency Information

1. Department:	Administrative Services	
Agency:	Archives and Records Service	
Building:	State Archives	
Street address:	346 S Rio Grande St	
City, state:	Salt Lake City, UT 84101	
Mailing address:	346 S Rio Grande St	
City, state, zip:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kendra Yates	801-531-3856	kendrayates@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R17-6-3. Records Storage and Disposal -- Archives Responsibility
3. Purpose of the new rule or reason for the change:
This amendment updates Section R17-6-3 to reference the newly created Records Management Committee (Committee), which took over some of the State Records Committee's responsibilities. The Committee is created at Section 63A-12-112 (see S.B. 25 passed in the 2019 General Session); its duties are described in Section 63A-12-113.
4. Summary of the new rule or change:
The change updates the referenced committee that reviews and approves retention schedules from the State Records Committee to the Records Management Committee.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This amendment has no fiscal impact on state budget because it is only administrative in nature.

B) Local governments:			
This amendment has no fiscal impact on local governments because it is only administrative and internal in nature.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This amendment has no fiscal impact on small businesses because it is only administrative and internal in nature.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This amendment has no fiscal impact on non-small businesses because it is only administrative and internal in nature.			
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 <i>agency</i>):			
This amendment has no fiscal impact on persons because it is only administrative in nature.			
F) Compliance costs for affected persons:			
There is no cost for complying with these changes.			
G) 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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services, Tani Downing, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This change will not have a fiscal impact on businesses, as it is only administrative in nature.

B) Name and title of department head commenting on the fiscal impacts:

Tani Downing, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 63A-12-104	Section 63A-12-112	Section 63A-12-113
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/15/2020

10. This rule change MAY become effective on: 07/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a

Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Kenneth Williams, Division Director	Date:	05/26/2020
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R17. Administrative Services, Archives and Records Service.

R17-6. Records Storage and Disposal at the State Records Center. R17-6-3. Records Storage and Disposal -- Archives Responsibility.

(1) The State Archives stores semi-active records at the State Records Center in accordance with the approved retention schedule. The State Records Center may accept records for which a proposed retention has been presented to the ~~[State Records Committee]~~Records Management Committee with the provision that if the committee does not approve the retention, the records will be returned to the agency.

(2) The State Archives destroys records stored at the Records Center in accordance with the approved retention schedule and upon authorization from the creating agency. If the creating agency does not respond to the second request for authorized destruction within ~~[ninety (90)]~~ days, the records may be returned to the agency.

(3) In the event that a record has met its scheduled retention requirements and the Records Center is unable to locate an authorized agency to provide destruction approval or the agency is obsolete, the records will become the official custody of the Utah State Archives and the State Archivist will determine the disposition of the records.

KEY: records retention, public information, access to information Date of Enactment or Last Substantive Amendment: ~~December 31, 2013~~2020

Notice of Continuation: October 27, 2017

Authorizing, and Implemented or Interpreted Law: 63A-12-104; 63A-12-112; 63A-12-113

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R35-1	Filing No. 52789

Agency Information

1. Department:	Administrative Services	
Agency:	Records Committee	
Building:	State Archives	
Street address:	346 S Rio Grande St	
City, state:	Salt Lake City, UT 84101	
Mailing address:	346 S Rio Grande St	
City, state, zip:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kendra Yates	801-531-3856	kendrayates@utah.gov
Rebekkah Shaw	801-531-3851	rshaw@utah.gov

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

General Information

2. Rule or section catchline:

R35-1. State Records Committee Appeal Hearing Procedures

3. Purpose of the new rule or reason for the change:

These amendments are intended to preserve agency ownership of records provided for in camera review and to clarify postponement procedures for State Records Committee (Committee) members and for parties of appeal hearings.

4. Summary of the new rule or change:

The amendment to Subsection R35-1-2(5)(b) states explicitly that records provided to the Committee for in camera review remain in the custody of the agency and no copy transfers into the Committee's custody. The amendment to Subsection R35-1-2(6) states when third party presentations must occur. The amendment to Subsection R35-1-2(12) clarifies the process and time limit for petitioners to request a hearing be postponed.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This amendment has no fiscal impact on state budget because it is only administrative in nature.

B) Local governments:

This amendment has no fiscal impact on local governments because it is only administrative and internal in nature.

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

This amendment has no fiscal impact on small businesses because it is only administrative and internal in nature.

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

This amendment has no fiscal impact on non-small businesses because it is only administrative and internal in nature.

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 amendment has no fiscal impact on persons because it is only administrative in nature.

F) Compliance costs for affected persons:

There is no cost for complying with these changes.

G) 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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services, Tani Downing, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This change will not have a fiscal impact on businesses, as it is only administrative in nature, and clarifies long-standing processes utilizing staff as they are in their current roles.

B) Name and title of department head commenting on the fiscal impacts:

Tani Downing, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 63G-2-401(5)(c)	Subsection 63G-2-403(9)	Subsection 63G-2-403(4)(a)
Section 63G-2-201	Section 63A-12-101	Section 52-4-203

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Kenneth Williams, Division Director	Date:	05/14/2020
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R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within seven business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Notice Website.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(3) Witnesses providing testimony shall be sworn in by the Committee Chair.

(4) Questioning of the witnesses and parties by Committee members is permitted.

(5) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary pursuant to 63G-2-403(9).

(a) If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee via the Executive Secretary and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(b) Records provided by the governmental entity for in camera review by the Committee remain in the custody of the governmental entity. Records in camera review are retained by the Committee for only the period of in camera review and all records are returned to the governmental entity at the conclusion of the in camera review.

(6) Third party presentations may be permitted. Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to five minutes, and must be presented prior to closing arguments.

(7) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(8) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(9) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(10) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(11) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to [Utah Code] Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

NOTICES OF PROPOSED RULES

(b) If one or more Committee members or parties may be participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record ~~all~~ each of those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

(12)(a) Pursuant to Subsection 63G-2-401(5)(c) a petitioner may request a postponement of a hearing, with the consensus of the governmental entity. If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the ~~Executive Secretary of the~~ Committee via the Executive Secretary and the governmental entity in writing no later than ~~two~~ five days prior to the scheduled hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties. If the request is granted, the Chair shall instruct the Executive Secretary to schedule the appeal for the next available hearing date pursuant to 63G-2-403(4)(a).

(c) The ~~Chair~~ Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of each Decision and Order shall be distributed to the petitioner, the governmental entity and ~~all~~ other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. ~~Utah Code~~ Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of ~~Utah Code~~ Sections 52-4-203, 63G-3-201, and 63A-12-~~101~~ et seq.

(3) ~~All m~~ Meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within three business days. Access to the audio recordings shall be provided by the Executive Secretary on the Utah Public Notice Website.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings shall be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but awaiting official approval, they are a public record and must be marked as "Draft."

(d) At the next meeting, at the direction of the Committee Chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes shall be then marked as "Approved."

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access on the Utah Public Notice Website.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: ~~October 18, 2019~~ 2020

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: ~~63G-2-502(2)(a)~~ 63G-2-401(5)(c); 63G-2-403(9); 63G-2-403(4)(a); 63G-2-201; 63A-12-101; 52-4-203

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R35-2-2	Filing No. 52790	

Agency Information

1. Department:	Administrative Services
Agency:	Records Committee
Building:	State Archives
Street address:	346 S Rio Grande St
City, state:	Salt Lake City, UT 84101
Mailing address:	346 S Rio Grande St
City, state, zip:	Salt Lake City, UT 84101

Contact person(s):		
Name:	Phone:	Email:
Kendra Yates	801-531-3856	kendrayates@utah.gov
Rebekkah Shaw	801-531-3851	rshaw@utah.gov

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

General Information

2. Rule or section catchline:

R35-2-2. Declining Requests for Hearings
3. Purpose of the new rule or reason for the change:
The amendments reorganize the existing rules to differentiate between declining an appeal and not scheduling an appeal, to clarify the process for each, and to specify certain categories of appeals that will not be heard.
4. Summary of the new rule or change:
The catchline of Section R35-2-2 is amended, some subsections are reordered, and appeals outside the Committee's jurisdiction and untimely appeals will not be scheduled. Citations are updated.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This amendment has no fiscal impact on state budget because it is only administrative in nature.
B) Local governments:
This amendment has no fiscal impact on local governments because it is only administrative and internal in nature.
C) Small businesses ("small business" means a business employing 1-49 persons):
This amendment has no fiscal impact on small businesses because it is only administrative and internal in nature.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This amendment has no fiscal impact on non-small businesses because it is only administrative and internal in nature.
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 amendment has no fiscal impact on persons because it is only administrative in nature.
F) Compliance costs for affected persons:
There is no cost for complying with these changes.
G) 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	FY2021	FY2022	FY2023
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
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Administrative Services, Tani Downing, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
This change will not have a fiscal impact on businesses, as it is only administrative in nature, and clarifies long-standing processes utilizing staff as they are in their current roles.			
B) Name and title of department head commenting on the fiscal impacts:			
Tani Downing, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):
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NOTICES OF PROPOSED RULES

Subsection 63G-2-402(1)(b)	Subsection 63G-2-403(1)	Subsection 63G-2-403(2)
Subsection 63G-2-403(3)(a)	Subsection 63G-2-403(4)	Subsection 63G-2-403(4)(b)(ii)(A)
Subsection 63G-2-403(11)(b)	Section 63G-2-502	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Kenneth Williams, Division Director	Date:	05/14/2020
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R35. Administrative Services, Records Committee.

R35-2. Declining Appeal Hearings.

R35-2-2. Scheduling and Declining Requests for Hearings.

(1) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee Chair and at least one other member of the Committee~~[as selected by the Chair]~~.

(a) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b). A copy of each decision to decline a hearing shall be retained in the file.

(b) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been declined, as provided for in Subsection 63G-2-403(4)(b)(ii)(A), shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.

(2) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or has not sufficiently or has improperly searched for the record. The Committee Chair shall determine whether or not the petitioner has provided sufficient evidence. If the Committee Chair determines that sufficient evidence has been provided, the Chair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the Committee Chair determines that sufficient evidence has not been provided, the Chair shall direct the Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the Chair to direct the Executive Secretary to not schedule a hearing.

(3) In order to file an appeal, the petitioner must submit the following: a copy of his or her initial records request[s], or a statement of the specific records requested if a copy is unavailable to the petitioner[-]; a copy of any records appeals; [as well as] a copy of the final responses from the respondents containing their decisions regarding [any decision of] the records request and appeals; and a statement of relief sought. If any of the above have not been provided, t[F]he Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted. The petitioner must provide the missing information within seven days of receipt of the notice in order for the notice of appeal to be considered filed pursuant to Subsections 63G-2-403(2) and (4)(a).

~~_____ (4) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be retained in the file.~~

~~_____ (5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii)(A), Utah Code, shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.]~~

(4) An appeal not timely received pursuant to Subsection 63G-2-403(1)(a) will not be scheduled.

(5) An appeal pertaining to the Judiciary, Legislature, or to a political subdivision that has established a local appeals board that has not yet received and addressed the appeal, is not within the Committee's jurisdiction and will not be scheduled pursuant to Title 63G, Chapter 2, Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, and to Subsection 63G-2-402(1)(b).

(6) A petition from a governmental entity challenging jurisdiction based on failure of the petitioner to serve notice of appeal to the governmental entity pursuant to Subsection 63G-2-403(3)(a) shall be denied. The petitioner's appeal will be accepted and a hearing scheduled before the Committee.

~~[(6)](7) The Executive Secretary shall report on appeals received[each of the hearings declined] at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.~~

~~(7)~~(8) If a Committee member has requested a discussion to reconsider the decision to decline or not schedule a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and ~~if~~ whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

~~(8)~~(9) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of ~~all~~ hearings held, withdrawn, and declined.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: ~~June 22, 2017~~ 2020

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: 63G-2-402(1)(b); 63G-2-403(1); 63G-2-403(2); 63G-2-403(3)(a); 63G-2-403(4); 63G-2-403(4)(b)(ii)(A); 63G-2-403(11)(b); 63G-2-502

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R35-4	Filing No.	52791
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Agency Information

1. Department:	Administrative Services		
Agency:	Records Committee		
Building:	State Archives		
Street address:	346 S Rio Grande St		
City, state:	Salt Lake City, UT 84101		
Mailing address:	346 S Rio Grande St		
City, state, zip:	Salt Lake City, UT 84101		
Contact person(s):			
Name:	Phone:	Email:	
Kendra Yates	801-531-3856	kendrayates@utah.gov	
Rebekkah Shaw	801-531-3851	rshaw@utah.gov	

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

General Information

2. Rule or section catchline:
R35-4. Compliance with State Records Committee Decisions and Orders

3. Purpose of the new rule or reason for the change:

The amendment is necessary due to an update in Subsection 63G-2-403(15) (see S.B. 137 passed in the 2018 General Session).

4. Summary of the new rule or change:

Section R35-4-2 is amended to state that the Records Committee sends notices of noncompliance to the Governor's office only.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This amendment has no fiscal impact on state budget because it is only administrative in nature.

B) Local governments:

This amendment has no fiscal impact on local governments because it is only administrative and internal in nature.

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

This amendment has no fiscal impact on small businesses because it is only administrative and internal in nature.

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

This amendment has no fiscal impact on non-small businesses because it is only administrative and internal in nature.

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 amendment has no fiscal impact on persons because it is only administrative in nature.

F) Compliance costs for affected persons:

There is no cost for complying with these changes.

G) 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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Administrative Services, Tani Downing, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
This change will not have a fiscal impact on businesses, as it is only administrative in nature, and reduces the work of staff.			
B) Name and title of department head commenting on the fiscal impacts:			
Tani Downing, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 63G-2-403(15)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also
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request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
A) Comments will be accepted until: 07/15/2020

10. This rule change MAY become effective on: 07/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title: Kenneth Williams, Division Director	Date: 05/14/2020
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R35. Administrative Services, Records Committee.

R35-4. Compliance with State Records Committee Decisions and Orders.

R35-4-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(15), [Utah Code,] this rule intends to establish the procedure for complying with an order of the State Records Committee.

R35-4-2. Notices of Compliance.

(1) The Executive Secretary of the Committee shall send an order of the Committee by certified mail to the petitioner and to the governmental entity ordered to produce records.

(2) Pursuant to Subsection 63G-2-403(15)(a), [Utah Code,] each governmental entity ordered by the Committee to produce records[?] shall file with the Executive Secretary either a notice of compliance, or a copy of the appellant's notice of intent to appeal the Committee order, no later than the thirtieth day following the date of the Committee order.

(3) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and shall state the method and date of delivery.

(4) In the event a governmental entity fails to file a notice of compliance or a copy of the appellant's notice of intent to appeal the Committee order within the time frame specified, the Committee shall send written notice of the entity's noncompliance to the governor[~~for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities~~].

(5) The Committee may also impose a civil penalty of up to \$500 for each day of continuing noncompliance, but only after

holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled Committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: ~~July 31, 2015~~ 2020

Notice of Continuation: June 3, 2019

Authorizing, and Implemented or Interpreted Law: ~~63G-2-502(2)(a)~~ 63G-2-403(15)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-309	Filing No. 52803

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state, 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 of Teachers
3. Purpose of the new rule or reason for the change:
The purposes of the amendment is to move language from this rule to Rule R277-301.
4. Summary of the new rule or change:
The amendment to the rule included moving two sections from Rule R277-309 and incorporating them into Rule R277-301 and updating definitions to correspond to the changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:
This rule change is not expected to have material fiscal impact on state government revenues or expenditures. The changes are primarily technical and clarifying in nature.
B) Local governments:
This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. The changes are primarily technical and clarifying in nature.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have material fiscal impact on small businesses' revenues or expenditures. The changes are primarily technical and clarifying in nature.
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 material fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes are primarily technical and clarifying in nature.
F) Compliance costs for affected persons:
There are no compliance costs for affected persons. The changes are primarily technical and clarifying in nature.
G) 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

NOTICES OF PROPOSED RULES

Fiscal Cost	FY2021	FY2022	FY2023
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
H) Department head approval of regulatory impact analysis:			
The State Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
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. This 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. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.			
B) Name and title of department head commenting on the fiscal impacts:			
Sydnee Dickson, State Superintendent			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(2)(a)
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	06/01/2020
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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) "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

~~[(2) "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course using lines of evidence which may include:~~

~~(a) completed Board approved course work;~~
~~(b) content tests; or~~
~~(c) years of successful experience including evidence of student performance.]~~

([3]2) "Educator license" means an associate, professional, or LEA-specific license issued by the Superintendent under Rule R277-301.

([4]3) "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) "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-309-5.]~~

([9]4)(a) "License areas of concentration" has the same meaning as described in Section R277-301-2.

([40]5)(a) "License endorsement" or "endorsement" has the same meaning as described in Section R277-301-2.

([14]6) "Secondary setting" means an instructional model where students typically rotate ~~[between]~~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) 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, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate endorsement.

(10) 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.

(11) 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.

NOTICES OF PROPOSED RULES

(12) 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.

(13) 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.

(14) 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.

(15) An educator assigned in any other position that requires an educator license, as defined by the district, shall hold a current educator license with the appropriate license area of concentration and endorsement as defined by the district.

(16) An educator assigned in an administrative position in a charter school is exempt from Subsections (14) and (15) consistent with Section 53G-5-405.

(17) 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.

~~R277-309-5. Eminence.~~

~~(1) The purpose of an eminence designation is to allow an individual with exceptional training or expertise, consistent with Subsection R277-309-2(5), to teach or work in the public schools on a limited basis.~~

~~(2) An LEA may request an eminence designation for an LEA specific license, license area, or endorsement for a teacher whose employment with the LEA is no more than 37% of the regular instructional load.~~

~~(3)(a) The Superintendent may approve or deny a request under Subsection (2).~~

~~(b) The Superintendent may require documentation of the exceptional training, skills, or expertise of a candidate for an eminence designation.~~

~~(4)(a) The Superintendent may approve or deny the renewal of an LEA specific license, license area, or endorsement with an eminence designation at the request of the LEA that requested the designation.~~

~~(b) Subsection (4)(a) supersedes Section R277-301-7(5) for a licensee with an eminence designation.~~

~~(5) If a request for an eminence designation or renewal of an eminence designation is denied by the Superintendent, the LEA may appeal the denial to the Board.~~

~~R277-309-6. Routes to Appropriate Endorsements for Teachers.~~

~~(1) An educator may add an endorsement to an existing license area of concentration by meeting the requirements for an associate, professional, or LEA specific endorsement as established in Rule R277-301.~~

~~(2) An educator that holds a professional license area of concentration may meet the content knowledge requirements for an associate endorsement by meeting the competency criteria established by the Superintendent.~~

~~(3) An educator shall meet all content knowledge requirements for an associate endorsement to receive a professional endorsement in the area.]~~

KEY: educator, license, assignment

Date of Enactment or Last Substantive Amendment: ~~March 12,~~ 2020

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.):	R315-270-42	Filing No. 52765	

Agency Information

1. Department:	Environmental Quality
Agency:	Waste Management and Radiation Control, Waste Management
Building:	MASOB
Street address:	195 N 1950 W
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144880
City, state, zip:	Salt Lake City, UT 84114-4880

Contact person(s):

Name:	Phone:	Email:
Thomas Ball	801-536-0251	tball@utah.gov
Rusty Lundberg	801-536-4257	rlundberg@utah.gov

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

General Information

2. Rule or section catchline:
R315-270-42. Hazardous Waste Permit Program -- Permit Modification at the Request of the Permittee

3. Purpose of the new rule or reason for the change:
Subsections R315-270-42(a)(1)(ii), R315-270-42(b)(2), R315-270-42(c)(2), and R315-270-42(e)(2)(iii) all require a permittee to send notices to the facility mailing list and to appropriate units of state and local governments. These subsections should make reference to Subsections R315-124-10(c)(1)(ix) and (x). However, Subsections R315-270-42(c)(2) and (e)(2)(iii) only contain the reference to R315-124-10(c)(1)(ix).

Additionally, minor formatting corrections have been made throughout Section R315-270-42 to conform with current standards for rulewriting.

4. Summary of the new rule or change:
"R315-124-10(c)(1)(ix)" is being added to Subsections R315-270-42(c)(2) and (e)(2)(iii). This will standardize the language in all four subsections, R315-270-42(a)(1)(ii), (b)(2), (c)(2), and (e)(2)(iii).

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no cost or savings to the state budget based on this rule amendment because the amendment does not add or remove any requirements from the rules.

B) Local governments:

There is no cost or savings to local governments based on this rule amendment because the amendment does not add or remove any requirements from the rules.

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

There is no cost or savings to small businesses based on this rule amendment because the amendment does not add or remove any requirements from the rules.

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

There is no cost or savings to non-small businesses based on this rule amendment because the amendment does not add or remove any requirements from the rules.

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 cost or savings to persons other than small businesses, non-small businesses, state, or local government entities based on this rule amendment because the amendment does not add or remove any requirements from the rules.

F) Compliance costs for affected persons:

There will be no compliance costs for persons affected by this amendment because the amendment does not add or remove any requirements from the rules. This amendment simply standardizes rule language for better clarity in the rules.

G) 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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The changes being made by this amendment to the rules do not add any new requirements or remove any existing requirements and therefore, will not have any fiscal impact, cost or benefit, on businesses. The changes simply standardize language in four subsections of the rules to make the requirements of the rules clear to all readers.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-6-104	Section 19-6-105	Section 19-6-106
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ty L. Howard, Director	Date:	05/14/2020
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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-270. Hazardous Waste Permit Program.

R315-270-42. Hazardous Waste Permit Program – Permit Modification at the Request of the Permittee.

(a) Class 1 modifications.

(1) Except as provided in Subsection R315-270-42(a)(2), the permittee may put into effect Class 1 modifications listed in [a]Appendix I of Section R315-270-42 under the following conditions:

(i) The permittee shall notify the Director concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by Sections R315-270-13 through R315-270-21, R315-270-62, and R315-270-63.

(ii) The permittee shall send a notice of the modification to [a]each person[s] on the facility mailing list, maintained by the Director in accordance with Subsection R315-124-10(c)(1)(ix), and the appropriate units of State and local government, as specified in Subsection R315-124-10(c)(1)(x). This notification shall be made within 90 calendar days after the change is put into effect. For the Class I modifications that require prior Director approval, the notification shall be made within 90 calendar days after the Director approves the request.

(iii) Any person may request the Director to review, and the Director may for cause reject, any Class 1 modification. The Director shall inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1

modification has been rejected, the permittee shall comply with the original permit conditions.

(2) Class 1 permit modifications identified in [a]Appendix I by an asterisk may be made only with the prior written approval of the Director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in Subsection R315-270-42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee shall inform the Director of this decision in the notice required in Subsection R315-270-42(b)(1).

(b) Class 2 modifications.

(1) For Class 2 modifications, listed in [a]Appendix I of Section R315-270-42, the permittee shall submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by Sections R315-270-13 through R315-270-21, R315-270-62, and R315-270-63.

(2) The permittee shall send a notice of the modification request to [a]each person[s] on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in Subsections R315-124-10(c)(1)(ix) and R315-124-10(c)(1)(x) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee shall provide to the Director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a 60-day comment period, in accordance with Subsection R315-270-42(b)(5), and the name and address of an Agency contact to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with Subsection R315-270-42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of an Agency contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Agency contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in Subsection R315-270-42(b)(2) and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Division contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Director shall:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Determine that the modification request shall follow the procedures in Subsection R315-270-42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days~~[-];~~ or

(E) Notify the permittee that the Director will decide on the request within the next 30 days.

(ii) If the Director notifies the permittee of a 30-day extension for a decision, the Director shall, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request~~[-or]~~

(C) Determine that the modification request shall follow the procedures in Subsection R315-270-42(c) for Class 3 modifications for the following reasons:

(1) There is significant public concern about the proposed modification; or

(2) The complex nature of the change requires the more extensive procedures of Class 3~~[-];~~ or

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days.

(iii) If the Director fails to make one of the decisions specified in Subsection R315-270-42(b)(6)(ii) by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal action by the Director. The authorized activities shall be conducted as described in the permit modification request and shall be in compliance with ~~the~~ appropriate standards of Rule R315-265. If the Director approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in ~~Section~~ Subsection R315-270-42(b)(6)(i), R315-270-42(b)(6)(ii), or R315-270-42(b)(6)(iii), ~~such~~ this action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under Subsection R315-270-42(b)(6)(iii), or a temporary authorization under Subsections R315-270-42(b)(6)(i)(D) or R315-270-42(b)(6)(ii)(D), if the Director has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee shall within seven days of that time send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(1) The permittee has been authorized temporarily to conduct the activities described in the permit modification request~~[-];~~ and

(2) Unless the Director acts to give final approval or denial of the request by the end of the authorization period, the permittee shall receive authorization to conduct ~~such~~ the activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in Subsection R315-270-42(b)(6)(iv)(A), the effective date of the permanent authorization shall be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in Subsection R315-270-42(b)(6)(vii), if the Director does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for

the life of the permit unless modified later under Section R315-270-41 or R315-270-42. The activities authorized under Subsection R315-270-42(b) shall be conducted as described in the permit modification request and shall be in compliance with ~~the~~ appropriate standards of Rule R315-265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Director shall consider ~~the~~ each written comment~~[s]~~ submitted during the public comment period and shall respond in writing to ~~the~~ each significant comment~~[s]~~ in the Director's decision.

(vii) With the written consent of the permittee, the Director may extend indefinitely or for a specified period the time periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(7) The Director may deny or change the terms of a Class 2 permit modification request under Subsections R315-270-42(b)(6)(i) through R315-270-42(b)(6)(iii) for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of Rule R315-264 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the Director establishes a later date for commencing construction and informs the permittee in writing before day 60.

(c) Class 3 modifications.

(1) For Class 3 modifications listed in ~~the~~ Appendix I of Section R315-270-42, the permittee shall submit a modification request to the Director that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by Sections R315-270-13 through R315-270-22, R315-270-62, R315-270-63, and R315-270-66.

(2) The permittee shall send a notice of the modification request to ~~the~~ each person~~[s]~~ on the facility mailing list maintained by the Director and to the appropriate units of State and local government as specified in Subsections R315-124-10(c)(1)(ix) and R315-124-10(c)(1)(x) and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within seven days before or after the date of submission of the modification request, and the permittee shall provide to the Director evidence of the mailing and publication. The notice shall include:

(i) Announcement of a 60-day comment period, and a name and address of the Director to whom comments shall be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with Subsection R315-270-42(c)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a Division contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

NOTICES OF PROPOSED RULES

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Division's contact person."

(3) The permittee shall place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee shall hold a public meeting no earlier than 15 days after the publication of the notice required in Subsection R315-270-42(c)(2) and no later than 15 days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period shall begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the Director.

(6) After the conclusion of the 60-day comment period, the Director shall grant or deny the permit modification request according to the permit modification procedures of Rule R315-124. In addition, the Director shall consider and respond to ~~at least~~ each significant written comment[s] received during the 60-day comment period.

(d) Other modifications.

(1) In the case of modifications not explicitly listed in ~~an~~ Appendix I of Section R315-270-42, the permittee may submit a Class 3 modification request to the Director, or the permittee may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, the permittee shall provide the Director with the necessary information to support the requested classification.

(2) The Director shall make the determination described in Subsection R315-270-42(d)(1) as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in ~~an~~ Appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to ~~the~~ ~~changes~~ ~~in~~ ~~the~~ ~~types~~ ~~and~~ ~~quantities~~ ~~of~~ ~~the~~ ~~wastes~~ ~~managed~~ ~~under~~ ~~the~~ ~~facility~~ ~~permit~~ ~~;~~ ~~and~~

(A) Common variations in the types and quantities of the wastes managed under the facility permit ~~;~~ ~~and~~

(B) Technological advancements ~~;~~ ~~and~~

(C) Changes necessary to comply with new ~~regulations~~ ~~rules~~, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(e) Temporary authorizations.

(1) Upon request of the permittee, the Director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with Subsection R315-270-42(e). Temporary authorizations shall have a term of not more than 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in Subsection R315-270-42(e)(3)(ii) ~~;~~ ~~and~~

(B) Any Class 3 modification that meets the criteria in Subsection R315-270-42(e)(3)(ii)(A) or R315-270-42(e)(3)(ii)(B); or

that meets the criteria in Subsections R315-270-42(e)(3)(ii)(C) through R315-270-42(e)(3)(ii)(E) and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request shall include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with Rule R315-264 standards.

(iii) The permittee shall send a notice about the temporary authorization request to ~~at least~~ each person[s] on the facility mailing list maintained by the Director and to appropriate units of State and local governments as specified in Subsections R315-124-10(c)(1)(ix) and R315-124-10(c)(1)(x). This notification shall be made within seven days of submission of the authorization request.

(3) The Director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Director shall find:

(i) The authorized activities are in compliance with the standards of Rule R315-264 ~~;~~ ~~and~~

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with Rule R315-268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(i) The reissued temporary authorization constitutes the Director's decision on a Class 2 permit modification in accordance with Subsection R315-270-42(b)(6)(i)(D) or R315-270-42(b)(6)(ii)(D) ~~;~~ ~~or~~

(ii) The Director determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of Subsection R315-270-42(c) are conducted.

(f) Public notice and appeals of permit modification decisions.

(1) The Director shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under Section R315-270-42 to grant or deny a Class 2 or 3 permit modification request. The Director shall also notify ~~such~~ ~~those~~ persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under Subsection R315-270-42(b)(6)(iii) or R315-270-42(b)(6)(v).

(2) The Director's decision to grant or deny a Class 2 or 3 permit modification request under Section R315-270-42 may be appealed under the permit appeal procedures of Section R315-124-19.

(3) An automatic authorization that goes into effect under Subsection R315-270-42(b)(6)(iii) or R315-270-42(b)(6)(v) may be appealed under the permit appeal procedures of Section R315-124-19; however, the permittee may continue to conduct the activities pursuant

to the automatic authorization unless and until a final determination is made.

(g) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under Rule R315-261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Rules R315-265 and R315-266;

(iv) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to hazardous waste management standards; and

(v) In the case of land disposal units, the permittee certifies that each ~~such~~ unit is in compliance with ~~all~~ applicable requirements of Rule R315-265 for groundwater monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with ~~all~~ each of these requirements, the permittee shall lose authority to operate under Section R315-270-42.

(2) New wastes or units added to a facility's permit under Subsection R315-270-42(g) do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) Reserved.

(i) Permit modification list. The Director shall maintain a list of ~~all~~ each approved permit modification[s] and shall publish a notice once a year in a State-wide newspaper that an updated list is available for review.

(j) Combustion facility changes to meet 40 CFR 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under ~~a~~ Appendix I of Section R315-270-42, section L(9).

(1) Facility owners or operators shall have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, ~~to~~ see 40 CFR part 63 Section 63.1200-63.1499 revised as of July 1, 2000, in order to request a permit modification under Section R315-270-42 for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.

(2) Facility owners or operators shall comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under Section R315-270-42 for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(3) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at the Director's discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

(k) Waiver of permit conditions in support of transition to the 40 CFR 63 MACT standards.

(1) the permittee may request to have specific operating and emissions limits waived by submitting a Class 1 permit modification request under ~~a~~ Appendix I of Section R315-270-42, section L(10). The permittee shall:

(i) Identify the specific RCRA permit operating and emissions limits ~~which~~ that the permittee is requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the hazardous waste permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, at the Director's discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation, renewable at the discretion of the Director, the permittee shall:

(i) Submit a modification request to the Director at the ~~same~~ time test plans are submitted to the Director; and

(ii) The Director may elect to approve or deny the request contingent upon approval of the test plans.

Table

Appendix I to Section R315-270-42 -- Classification of Permit Modification

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components, as such as pipes, valves, pumps, conveyors, controls	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes,	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior to approval of the Director _____ ¹	1
b. Extension of final compliance date	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Director	¹
7. Changes in ownership or operational control of a facility, provided the procedures of Subsection R315-270-40(b) are followed	¹
8. Changes to remove permit conditions that are no longer applicable, i.e., because the standards upon which they are based are no longer applicable to the facility.	¹
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of Section R315-261-4.	¹
10. Changes in the expiration date of a permit issued to a facility at which all each unit[s] are is excluded under the provisions of Section [] R315-261-4.	¹
B. General Facility Standards	
1. Changes to waste sampling or analysis methods	
a. To conform with agency guidance or regulations rules _____	1

NOTICES OF PROPOSED RULES

b. To incorporate changes associated with F039, multi-source leachate, sampling or analysis methods	1	a. Addition of a corrective action program as required by Subsection R315-264-99(h)(2) and Section R315-264-100	3
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1	b. Changes to a corrective action program as required by Subsection R315-264-100(h), unless otherwise specified in this appendix	2
d. Other changes	2		
2. Changes to analytical quality assurance/control plan:		D. Closure	
a. To conform with agency guidance or regulations rules	1	1. Changes to the closure plan:	
b. Other changes	2	a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Director	1
3. Changes in procedures for maintaining the operating record	1	b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Director	1
4. Changes in frequency or content of inspection schedules	2	c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Director	1
5. Changes in the training plan:		d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Director	1
a. That affect the type or decrease the amount of training given to employees	2	e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	2
b. Other changes	1	f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under Subsections R315-264-113(d) and R315-264-113(e)	2
6. Contingency plan:		2. Creation of a new landfill unit as part of closure	3
a. Changes in emergency procedures, i.e., spill or release response procedures	2	3. Addition of the following new units to be used temporarily for closure activities:	
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1	a. Surface impoundments	3
c. Removal of equipment from emergency equipment list	2	b. Incinerators	3
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	1	c. Waste piles that do not comply with Subsection R315-264-250(c)	3
7. Construction quality assurance plan:		d. Waste piles that comply with Subsection R315-264-250(c)	2
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications	1	e. Tanks or containers, other than specified below	2
b. Other changes	2	f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Director	1
		g. Staging piles	2
Note: When If a permit modification, such as introduction of a new unit, requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as of the permit modification.		E. Post-Closure	
		1. Changes in name, address, or phone number of contact in post-closure plan	1
C. Ground-Water Protection		2. Extension of post-closure care period	2
1. Changes to wells:		3. Reduction in the post-closure care period	3
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground-water monitoring system	2	4. Changes to the expected year of final closure, where other permit conditions are not changed	1
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	1	5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure	2
2. Changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Director	1	F. Containers	
3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Director	1	1. Modification or addition of container units:	
4. Changes in point of compliance	2	a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	3
5. Changes in indicator parameters, hazardous constituents, or concentration limits, including ACLs:		b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	2
a. As specified in the groundwater protection standard	3	c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all any of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest	1
b. As specified in the detection monitoring program	2		
6. Changes to a detection monitoring program as required by Subsection R315-264-98(h), unless otherwise specified in this appendix	2		
7. Compliance monitoring program:			
a. Addition of compliance monitoring program as required by Sections R315-264-98(g)(4) and R315-264-99	3		
b. Changes to a compliance monitoring program as required by Subsection R315-264-99(j), unless otherwise specified in this appendix	2		
8. Corrective action program:			

environmental benefit" contained in Subsection R315-268-8(a)(2)(ii), with prior approval of the Director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028

- 2.
 - a. Modification of a container unit without increasing the capacity of the unit 2
 - b. Addition of a roof to a container unit without alteration of the containment system 1
- 3. Storage of different wastes in containers, except as provided in (F)(4) below:
 - a. That require additional or different management practices from those authorized in the permit 3
 - b. That do not require additional or different management practices from those authorized in the permit 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

- 4. Storage or treatment of different wastes in containers:
 - a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet ~~some or all~~any of the applicable treatment standards, or that are to be treated to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit." This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028) 1
 - b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type, ~~e.g.,~~such as incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1

G. Tanks

- 1.
 - a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below 3
 - b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below 2
 - c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2
 - d. After prior approval of the Director, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 1
 - e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet ~~some or all~~any of the applicable treatment standards or to treat wastes to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest

environmental benefit," with prior approval of the Director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028

- 2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2
- 3. Replacement of a tank with a tank that meets the ~~same~~design standards and has a capacity within +/-10% of the replaced tank provided
 - The capacity difference is no more than 1500 gallons,
 - The facility's permitted tank capacity is not increased, and
 - The replacement tank meets the~~same~~ conditions in the permit.
 1
- 4. Modification of a tank management practice 2
- 5. Management of different wastes in tanks:
 - a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in (G)(5)(c) below 3
 - b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in (G)(5)(d) 2
 - c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet ~~some or all~~any of the applicable treatment standards or that are to be treated to satisfy, in whole or in part, the standard of "use of practically available technology that yields the greatest environmental benefit." The modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1
 - d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type, ~~e.g.,~~such as incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

- 1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity 3
- 2. Replacement of a surface impoundment unit 3
- 3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system 2
- 4. Modification of a surface impoundment management practice[0] 2
- 5. Treatment, storage, or disposal of different wastes in surface impoundments:
 - a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 3

NOTICES OF PROPOSED RULES

- b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 2
- c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit," and provided that the unit meets the minimum technological requirements stated in Subsection R315-268-5(h)(2). This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1
- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in Subsection R315-268-5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type, for example, incinerator scrubber water. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1
- 6. Modifications of unconstructed units to comply with Subsections R315-264-221(c) and R315-264-226(d), ~~and~~ and Sections R315-264-222, ~~and~~ and R315-264-223 1
- 7. Changes in response action plan:
 - a. Increase in action leakage rate 3
 - b. Change in a specific response reducing its frequency or effectiveness 3
 - c. Other changes 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes[~~r~~].

- I. Enclosed Waste Piles. For ~~all~~ waste piles except those complying with Subsection R315-264-250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with Subsection R315-264-250(c).
 - 1. Modification or addition of waste pile units:
 - a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity 3
 - b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity 2
 - 2. Modification of waste pile unit without increasing the capacity of the unit 2
 - 3. Replacement of a waste pile unit with another waste pile unit of the ~~same~~ design and capacity and meeting ~~all~~ each waste pile condition~~s~~ in the permit 1
 - 4. Modification of a waste pile management practice 2
 - 5. Storage or treatment of different wastes in waste piles:
 - a. That require additional or different management practices or different design of the unit 3
 - b. That do not require additional or different management practices or different design of the unit 2
 - 6. Conversion of an enclosed waste pile to a containment building unit 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

- J. Landfills and Unenclosed Waste Piles
 - 1. Modification or addition of landfill units that result in increasing the facility's

- disposal capacity
- 2. Replacement of a landfill 3
- 3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system 3
- 4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system 2
- 5. Modification of a landfill management practice 2
- 6. Landfill different wastes:
 - a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 3
 - b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 2
 - c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit," and provided that the landfill unit meets the minimum technological requirements stated in Subsection R315-268-5(h)(2). This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1
 - d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in Subsection R315-268-5(h)(2), and provided further that the landfill has previously received wastes of the same type, for example, incinerator ash. This modification is not applicable to dioxin-containing wastes, F020, 021, 022, 023, 026, 027, and 028 1
- 7. Modifications of unconstructed units to comply with Subsection R315-264-251(c), Sections R315-264-252 and R315-264-253, Subsections R315-264-254(c) and R315-264-301(c), Section R315-264-302, Subsection R315-264-303(c), and Section R315-264-304 1
- 8. Changes in response action plan:
 - a. Increase in action leakage rate 3
 - b. Change in a specific response reducing its frequency or effectiveness 3
 - c. Other changes 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.[~~r~~]

- K. Land Treatment
 - 1. Lateral expansion of or other modification of a land treatment unit to increase areal extent 3
 - 2. Modification of run-on control system 2
 - 3. Modify run-off control system 3
 - 4. Other modifications of land treatment unit component specifications or standards required in permit 2
 - 5. Management of different wastes in land treatment units:
 - a. That require a change in permit operating conditions or unit design specifications 3
 - b. That do not require a change in permit operating conditions or unit design specifications 2

Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes.

- 6. Modification of a land treatment unit management practice to:
 - a. Increase rate or change method of waste application 3
 - b. Decrease rate of waste application 1
 - 7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions 2
 - 8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from ~~such~~ those crops 3
 - 9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to Subsection R315-264-278(g)(2) 3
 - 10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements 3
 - 11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements 2
 - 12. Changes in background values for hazardous constituents in soil and soil-pore liquid 2
 - 13. Changes in sampling, analysis, or statistical procedure 2
 - 14. Changes in land treatment demonstration program prior to or during the demonstration 2
 - 15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Director's prior approval has been received 1
 - 16. Changes to allow a second land treatment demonstration to be conducted ~~when~~ if the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Director 1
 - 17. Changes to allow a second land treatment demonstration to be conducted ~~when~~ if the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration 3
 - 18. Changes in vegetative cover requirements for closure 2
 - L. Incinerators, Boilers, and Industrial Furnaces:
 - 1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
 - 2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 2
 - 3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl₂, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
 - 4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but ~~when~~ that would change the operating conditions or monitoring requirements specified in the permit. The Director may require a new trial burn to demonstrate compliance with the regulatory performance standards 2
 - 5. Operating requirements:
 - a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
 - b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls 3
 - c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit 2
 - 6. Burning different wastes:
 - a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Director shall require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
 - b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit 2
- Note: See Subsection R315-270-42(g) for modification procedures to be used for the management of newly listed or identified wastes_
- 7. Shakedown and trial burn:

NOTICES OF PROPOSED RULES

- a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn 2
- b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Director 1
- c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Director 1
- d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director 1
- 8. Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit 1
- 9. Technology changes needed to meet standards under 40 CFR part 63, [4]Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors[7], provided the procedures of Subsection R315-270-42(j) are followed. 1
- 10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63, [4]Subpart EEE-National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors[7], provided the procedures of Subsection R315-270-42(k) are followed. 1
- M. Containment Buildings.
 - 1. Modification or addition of containment building units:
 - a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity 3
 - b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity 2
 - 2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit 2
 - 3. Replacement of a containment building with a containment building that meets the[~~same~~] design standards provided:
 - a. The unit capacity is not increased 1
 - b. The replacement containment building meets the[~~same~~] conditions in the permit 1
 - 4. Modification of a containment building management practice 2
 - 5. Storage or treatment of different wastes in containment buildings:
 - a. That require additional or different management practices 3
 - b. That do not require additional or different management practices 2
- N. Corrective Action:
 - 1. Approval of a corrective action management unit pursuant to Section R315-264-552 3
 - 2. Approval of a temporary unit or time extension for a temporary unit pursuant to Section R315-264-553 2
 - 3. Approval of a staging pile or staging pile operating term extension pursuant to Section R315-264-554 2
- O. Burden Reduction
 - 1. Reserved 1
 - 2. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to Subsection R315-264-52(b) 1
 - 3. Changes to recordkeeping and reporting requirements pursuant to: Subsections R315-

- 264-56(i), R315-264-343(a)(2), R315-264-1061(b)(1), (d), R315-264-1062(a)(2), R315-264-196(f), R315-264-100(g), and R315-264-113(e)(5)
- 4. Changes to inspection frequency for tank systems pursuant to Subsection R315-264-195(b) 1
- 5. Changes to detection and compliance monitoring program pursuant to Subsections R315-264-98(d), (g)(2), and (g)(3), R315-264-99(f), and (g) 1

¹Class 1 modifications requiring prior Agency approval.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: [~~August 31, 2017~~2020]

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R343-10	Filing No. 52788

Agency Information

1. Department:	Financial Institutions	
Agency:	Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 146800	
City, state, zip:	Salt Lake City UT 84114-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R343-10. Title Lenders Registration with the Nationwide Database
3. Purpose of the new rule or reason for the change:
With the passage of S.B. 24, during the 2015 General Session, the Department of Financial Institutions (Department) established, by rule, initial registration requirements for title lenders with the nationwide database. S.B. 24 (2015) provided that a rule could provide for the transition of persons registering with the nationwide database. The transition period has been in place for five years and this rule is no longer necessary.
4. Summary of the new rule or change:
The requirements of the rule are contained in the language

found in S.B. 24 (2015). Therefore, there will be no change with the repeal of this rule. This rule is repealed in its entirety.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Repealing this rule will not have a fiscal impact on state government revenues or expenditures. This rule contains guidance for persons transiting to registering with the nationwide database. The transition period has ended, and the ongoing requirements of this rule are spelled out in statute and thus, this rule is no longer necessary.
B) Local governments:
Repealing this rule will not have a fiscal impact on local governments' revenues or expenditures. This rule contains guidance for persons transiting to registering with the nationwide database. The transition period has ended, and the ongoing requirements of this rule are spelled out in statute and thus this rule is no longer necessary.
C) Small businesses ("small business" means a business employing 1-49 persons):
Repealing this rule will not have a fiscal impact on small businesses' revenues or expenditures. This rule contains guidance for persons transiting to registering with the nationwide database. The transition period has ended, and the ongoing requirements of this rule are spelled out in statute and thus, this rule is no longer necessary.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Repealing this rule will not have a fiscal impact on non-small businesses' revenues or expenditures. This rule contains guidance for persons transiting to registering with the nationwide database. The transition period has ended, and the ongoing requirements of this rule are spelled out in statute and thus, this rule is no longer necessary.
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):
Repealing this rule will not have a fiscal impact on other person's revenues or expenditures. This rule contains guidance for persons transiting to registering with the nationwide database. The transition period has ended, and the ongoing requirements of this rule are spelled out in statute and thus, this rule is no longer necessary.
F) Compliance costs for affected persons:

Repealing this rule will not have an impact on the compliance costs of affected persons. This rule contains guidance for persons transitioning to registering with the nationwide database. The transition period has ended, and the ongoing requirements of this rule are spelled out in the statute and thus, this rule is no longer necessary.

G) 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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Financial Institutions, Edward Leary, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Repealing this rule will not have a fiscal impact on businesses' revenues or expenditures. This rule contains guidance for persons transiting to registering with the nationwide database. The transition period has ended,

and the ongoing requirements of this rule are spelled out in statute and thus, this rule is no longer necessary.

B) Name and title of department head commenting on the fiscal impacts:

Edward Leary, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection		
7-24-201(4)(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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on: 07/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	05/27/2020
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R343. Financial Institutions, Nondepository Lenders.

~~R343-10. Title Lenders Registration with the Nationwide Database.~~

~~R343-10-1. Authority, Scope and Purpose.~~

- ~~(1) This rule is issued pursuant to Section 7-24-201(4).~~
- ~~(2) This rule applies to title lenders that are required to register with the nationwide database.~~
- ~~(3) This rule establishes initial and renewal registration requirements for title lenders.~~

~~R343-10-2. Definitions.~~

- ~~(1) "Commissioner" means the Commissioner of Financial Institutions.~~
- ~~(2) "Department" means the Department of Financial Institutions.~~
- ~~(3) "Form MU1" means the Uniform Company License/Registration and Consent form adopted by the nationwide database.~~
- ~~(4) "NMLS" means the Nationwide Mortgage Licensing System located at <http://mortgage.nationwidelicencingsystem.org/>.~~

~~R343-10-3. Renewal of Current Registered Title Lenders.~~

- ~~(1) On or after November 1, 2015, title lenders that are registered with the department shall renew a registration through the NMLS.~~
- ~~(a) Title lenders that do not have a record in NMLS will be required to complete a Form MU1 on the NMLS website.~~
- ~~(b) Title lenders that have a record in NMLS and have submitted a company Form MU1 are not required to reenter their company information. Those with a record will complete the appropriate registration for Utah.~~

~~R343-10-4. Initial Registration of Title Lenders.~~

- ~~(1) On or after November 1, 2015, persons seeking authorization to transact business as a title lender in Utah or with a Utah resident may register with the department through the NMLS.~~
- ~~(a) Title lenders that do not have a record in NMLS will be required to complete a Form MU1 on the NMLS website.~~
- ~~(b) Title lenders that have a record in NMLS and have submitted a company Form MU1 are not required to reenter their company information. Those with a record will complete the appropriate registration for Utah.~~

~~R343-10-5. Fees.~~

- ~~(1) Title lenders filing an original registration through the NMLS shall pay the department an original registration fee as set forth in Subsection 7-1-401(8).~~
- ~~(2) Title lenders renewing a registration through NMLS shall pay an annual fee as set forth in Subsection 7-1-401(5).~~
- ~~(3) Title lenders renewing a registration through the NMLS in 2015, which have previously paid an annual fee in 2015, are not required to pay a second annual fee to the Department for 2015.~~
- ~~(4) Title lenders shall pay to the NMLS all fees required by NMLS.~~

~~KEY: title lenders, fees~~

~~Date of Enactment or Last Substantive Amendment: August 12, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 7-24-201(4)~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R362-2	Filing No. 52672

Agency Information

1. Department:	Governor
Agency:	Energy Development (Office of)
Street address:	60 E South Temple St. Suite 300

City, state:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Richard Bell	801-538-8682	rbell1@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R362-2. Administrative Rule Hearings
3. Purpose of the new rule or reason for the change:
The reason for the change is to clean up language of the original rule. This will help narrow the scope of this rule for the Governor's Office of Energy Development's administration of the incentive program.
4. Summary of the new rule or change:
The reenacted rule clarifies application submission process and eliminates eligibility criteria that does not align with statute.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This repeal and reenact cleans up language and eliminates text that already exists in code by deleting redundancy. Because this rule already exists, any fiscal impacts that were already in place will be the same. There will not be any new fiscal impact.
B) Local governments:
This repeal and reenact cleans up language and eliminates text that already exists in code by deleting redundancy. Because this rule already exists, any fiscal impacts that were already in place will be the same. There will not be any new fiscal impact.
C) Small businesses ("small business" means a business employing 1-49 persons):
This repeal and reenact cleans up language and eliminates text that already exists in code by deleting redundancy. Because this rule already exists, any fiscal impacts that were already in place will be the same. There will not be any new fiscal impact.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This repeal and reenact cleans up language and eliminates text that already exists in code by deleting redundancy. Because this rule already exists, any fiscal impacts that were already in place will be the same. There will not be any new fiscal impact.

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 repeal and reenact cleans up language and eliminates text that already exists in code by deleting redundancy. Because this rule already exists, any fiscal impacts that were already in place will be the same. There will not be any new fiscal impact.

F) Compliance costs for affected persons:

This repeal and reenact cleans up language and eliminates text that already exists in code by deleting redundancy. Because this rule already exists, any fiscal impacts that were already in place will be the same. There will not be any new fiscal impact.

G) 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	FY2021	FY2022	FY2023
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
H) Department head approval of regulatory impact analysis:			
The Executive Director, Robert Simmons, of the Governor's Office of Energy Development has reviewed and approved the fiscal analysis for this repeal and reenact.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There will not be any fiscal impact to businesses due to this repeal and reenact.			
B) Name and title of department head commenting on the fiscal impacts:			
Robert Simmons, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 59-7-614	Section 59-10-1014	Section 59-10-1106

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/15/2020

10. This rule change MAY become effective on:	07/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Richard Bell, Director of Incentives	Date:	05/29/2020
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**R362. Governor, Energy Development (Office of).
R362-2. Renewable Energy Systems Tax Credits.**

R362-2-1. Purpose.

~~_____ (A) This rule implements the responsibilities assigned to the Utah Governor's Office of Energy Development (OED) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.~~

~~_____ (B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.~~

~~_____ (C) This rule also establishes procedures for taxpayers to use when applying for OED certification of tax credit eligibility and tax credit amounts, and for OED to follow in reviewing such applications.~~

~~_____ (D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.~~

R362-2-2. Authority.

~~_____ Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the OED and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, the OED is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or producing energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the OED may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, the OED may also establish rules defining the reasonable costs of a system.~~

R362-2-3. Definitions.

~~_____ (A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.~~

~~_____ (B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.~~

~~_____ 1. Active solar thermal systems include systems that:~~

~~_____ a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;~~

~~_____ b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and~~

~~_____ e. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.~~

~~_____ 2. Active solar thermal systems do not include systems that use heat for evaporative cooling.~~

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

- a. material from a plant or tree; or
- b. other organic matter that is available on a renewable basis, including:
 - i. slash and brush from forests and woodlands;
 - ii. animal waste;
 - iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;
 - iv. aquatic plants; and
 - v. agricultural products.

2. A biomass system does not include:

- a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants
- b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct use geothermal, geothermal heat pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to \$50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange equipment and that uses a "ground source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or the Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8. This can include ground source heat pumps, water source heat pumps using ground water or surface water, and direct geoechange heat pump systems.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10-1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and

2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10-1106(2)(b) that provides 0.35 cents per kilowatt hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7-614, 57-10-1014, and 57-10-1106:

- 1. Active solar including solar thermal and photovoltaics;
- 2. Biomass except for systems combusting biomass for heat;
- 3. Direct use geothermal;
- 4. Geothermal electricity
- 5. Geothermal heat pump;
- 6. Hydroenergy;
- 7. Passive solar for heating or cooling;

- ~~8. Wind.~~
- ~~(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to \$2,000 of a residential energy system.~~
- ~~(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.~~
- ~~(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.~~
- ~~(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.~~
- ~~(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).~~
- ~~(Y) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.~~
- ~~(Z) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.~~

R362-2-4. Investment Tax Credit Certification Process.

- ~~(A) OED is responsible for certifying renewable energy systems tax credits.~~
- ~~(B) Applications for credits are to be made on forms developed by OED to gather information necessary to implement this rule.~~
- ~~(C) OED will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, OED reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, OED may deny the application and no tax credit will be certified.~~
- ~~(D) If, after evaluating an application, OED finds that a renewable energy system is eligible for a residential or commercial tax credit, OED will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only OED may issue a completed TC-40E and a tax credit may not be claimed without such documentation.~~
- ~~(E) Upon the completion of OED's evaluation of an application, OED will provide to the applicant one of the following, as appropriate:

 - ~~1. A completed TC-40E allowing the full amount of tax credit requested;~~
 - ~~2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or~~
 - ~~3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.~~~~
- ~~(F) If OED denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.~~

- ~~(G) All applications for credits under this rule shall provide the following information:

 - ~~1. The true legal name of the person or persons seeking a tax credit;~~
 - ~~2. The tax identification number or numbers of persons seeking a tax credit;~~
 - ~~3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit OED staff to locate the site for on-site verification of the information in the application.~~
 - ~~4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.~~~~
- ~~(H). Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

 - ~~1. Detailed diagrams of the system installed such that OED staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.~~
 - ~~2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.~~
 - ~~3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow OED to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.~~~~

R362-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

- ~~(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of \$50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$50,000 for any single commercial unit.~~
- ~~(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of \$2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same residential unit, however, the total of all credits awarded may not exceed \$2,000.~~
- ~~(C) Eligible costs for equipment are generally limited to system components that are both:~~

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end use; and

2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(F) All major energy producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or

2. Within the service territory of a retail electricity provider and is less than one quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) OED may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology specific sections of this rule, below.

R362-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R362-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems." The applicant can demonstrate to OED that the solar thermal system meets standards that are equivalent to those of the SRCC Document OG-300 by providing:

1. Detailed engineering design and performance data that show system performance, or

2. Certification from other recognized National or European solar thermal testing labs.

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar ration values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

<http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>;

2. Fixed, non-glazed collectors shall be:

a. Oriented within 45 degrees of true south if the fixed pitch is greater than 30 degrees from horizontal, or

b. Oriented within 90 degrees of true south if the fixed pitch is 30 degrees or less from horizontal.

3. Fixed, glazed collectors shall be oriented within:

a. 115 degree azimuth and 245 degree azimuth if the fixed pitch is greater than 35 degrees from horizontal, or

b. 90 degree azimuth and 270 degrees if the fixed pitch is 35 degrees or less from horizontal.

NOTICES OF PROPOSED RULES

~~_____ (G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:~~

- ~~_____ 1. A Utah licensed plumbing contractor (S210 license);~~
 - ~~_____ 2. A Utah licensed solar hot water contractor (S215 license);~~
- ~~or~~
- ~~_____ 3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.~~

~~_____ (H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:~~

- ~~_____ 1. A Utah licensed plumbing contractor (S210 license);~~
 - ~~_____ 2. A Utah licensed solar hot water contractor (S215 license);~~
- ~~or~~
- ~~_____ 3. A county or municipal building inspector licensed by the State of Utah.~~

~~_____ Proof of this certification may be required on the tax credit application.~~

~~_____ (I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than \$0.15 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:~~

~~_____ <http://www.solar-rating.org/ratings/ratings.htm>.~~

~~_____ 1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:~~

~~_____ Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.25~~

~~_____ 2. For a commercial tax credit application with total eligible costs exceeding \$0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:~~

~~_____ Tax credit granted = ((\$0.15 x rated output capacity in Btu/day) - rebates) x 0.10~~

~~_____ 3. If the cost of a flat panel active solar thermal system exceeds \$0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED after investigation as to the validity of the waiver claim.~~

~~_____ (J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than \$0.27 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:~~

~~_____ <http://www.solar-rating.org/ratings/ratings.htm>.~~

~~_____ 1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:~~

~~_____ Tax credit granted = ((\$0.27 x rated output capacity in Btu/day) - rebates) x 0.25~~

~~_____ 2. For a commercial tax credit application with total eligible costs exceeding \$0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:~~

~~_____ Tax credit granted = ((\$0.27 x rated output capacity in Btu/day) - rebates) x 0.10~~

~~_____ 3. If the cost of a flat panel solar thermal system exceeds \$0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED after investigation as to the validity of the waiver claim.~~

~~R362-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).~~

~~_____ (A) All eligible costs for solar PV energy systems must conform with Section R362-2-5, above. Solar PV energy systems must also meet the requirements in this Section.~~

~~_____ (B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:~~

- ~~_____ 1. Solar PV module(s);~~
- ~~_____ 2. Inverter;~~
- ~~_____ 3. Motors and other elements of a tracking array;~~
- ~~_____ 4. Mounting hardware;~~
- ~~_____ 5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;~~
- ~~_____ 6. Lightning arrestors.~~

~~_____ (C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:~~

- ~~_____ 1. Batteries;~~
- ~~_____ 2. Battery wiring;~~
- ~~_____ 3. Charge controllers; and~~
- ~~_____ 4. Battery temperature sensors.~~

~~_____ (D) The costs of solar PV modules are eligible for Utah tax credits only if they are:~~

~~_____ 1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:~~

~~_____ <http://www.gosolarecalifornia.org/equipment/index.html>; or~~

~~_____ 2. The applicant can demonstrate to OED that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.~~

~~_____ (E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:~~

~~_____ 1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:~~

~~_____ <http://www.gosolarecalifornia.org/equipment/index.html>; or~~

~~_____ 2. The applicant can demonstrate to OED that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.~~

~~_____ (F) Solar PV modules must be must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the~~

manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of \$2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:

1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two thirds of the daylight hours at the site;

2. Positioned so as to optimize the average annual solar radiation values (kWh/M2/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:

<http://rrede.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>);

3. Positioned such that the fixed solar array azimuth shall be oriented within:

a. 115 degrees and 245 degrees if the fixed pitch is greater than 35 degrees from horizontal, or

b. 90 degrees and 270 degrees if the fixed pitch is 35 degrees or less from horizontal.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:

1. A Utah licensed electrical contractor (S200);

2. A Utah licensed solar photovoltaic contractor (S202);

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or

4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$5 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$5 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$5 x rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$10 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((\$10 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((\$10 x rated output capacity in watts) - rebates) x 0.10

R362-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:

1. A means to allow the solar energy to enter the system;

2. A heat absorbing surface;

3. A thermal storage mass located within the conditioned space;

4. A heat transferal system or mechanism and;

5. Protection from summer overheating and excessive winter heat loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:

1. Trombe wall;

2. Water wall;

3. Thermosyphon;

4. Equipment or building shell components providing direct heat gain; and

5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed

NOTICES OF PROPOSED RULES

so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:

- 1. For a non-loaded structure, 100% of the cost may be eligible;
- 2. For a loaded structure, 50% of the cost may be eligible;
- 3. Notwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit is calculated.

(G) No tax credit shall be given if OED concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R362-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R362-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

- 1. Listed and certified by the Small Wind Certification Council in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: <http://www.smallwindcertification.org/certified-turbines/>
- 2. The applicant can demonstrate to OED that the turbine meets standards that are equivalent to those of the Small Wind Certification Council as of calendar year 2007.

(C) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid-connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid-connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

- 1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:
 - a. Buildings;
 - b. Utility poles or overhead utility lines;

c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.

2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:

- a. Trees or other vegetation;
- b. Buildings and other structures;
- c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that OED can verify appropriate siting. OED also reserves the right to conduct a site visit to verify appropriate siting.

(F) Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

- 1. A professional electrician licensed by the State of Utah;
- 2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than \$8 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility):

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$8 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$8 \times$ rated output capacity in watts) - rebates) \times 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$8 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$8 \times$ rated output capacity in watts) - rebates) \times 0.10

R362-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R362-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air source heat

pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;
2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or
3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or
4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Aaccredited Installer" by the International Ground Source Heat Pump Association (IGSHPA);
5. For direct geoechange systems, a person designated as a certified designer by an AHRI-accredited direct geoechange systems manufacturer.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a non-production well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the eligible cost of a geothermal heat pump system is considered to be no higher than \$6,500 per ton of output capacity for residential systems and \$5,500 per ton of output capacity for commercial systems for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$6,500 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = $((\$6,500 \times \text{rated output capacity in tons}) - \text{rebates}) \times 0.25$

2. For a commercial tax credit application with total eligible costs exceeding \$5,500 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = $((\$5,500 \times \text{rated output capacity in tons}) - \text{rebates}) \times 0.10$

3. If the cost of a geothermal heat pump system exceeds \$6,500(residential) or \$5,500(commercial) per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED and OED after investigation as to the validity of the waiver claim.

R362-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R362-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;

2. A county or municipal building inspector licensed by the State of Utah.
Proof of this certification may be required with the tax credit application.

R362-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R362-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights. Proof of driller qualifications and well right may be required on the tax credit application.

R362-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R362-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;
2. Generator;
3. Rectifier;
4. Inverter;
5. Penstocks;
6. Penstock ventilation;
7. Buck and boost transformer;
8. Valves;
9. Drains;
10. Diversion structures (with the exception of storage dams, fish facilities, and canals);

11. Screened intake device; and
12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;
2. Battery temperature sensors;
3. Charge controller and necessary wiring and disconnects;
4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a hydroenergy system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R362-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;
2. On site systems or facilities for collecting biomass that will be used in a digester or boiler;
3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);
4. Engines or turbines used to power generators;
5. Generators;
6. Inverters;
7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(F) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

~~Proof of designer qualification may be required on the tax credit application.~~

~~(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:~~

- ~~1. A professional electrician licensed by the State of Utah;~~
- ~~2. A county or municipal building inspector licensed by the State of Utah.~~

~~Proof of this certification may be required with the tax credit application.~~

R362-2-15. Certification of Production Tax Credit Eligibility.

~~(A) Businesses seeking to claim production tax credits must first apply to OED for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.~~

~~(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:~~

- ~~1. Biomass systems;~~
- ~~2. Wind energy systems; or~~
- ~~3. Geothermal electricity systems.~~

~~In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.~~

~~(C) Businesses may request certification by providing the following to OED:~~

- ~~1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;~~
- ~~2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;~~
- ~~3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;~~
- ~~4. Information on the location of the commercial energy system sufficient to permit site inspection by OED staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;~~
- ~~5. Photographs of key and/or representative components of the commercial energy system;~~
- ~~6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;~~
- ~~7. The date on which the commercial energy system entered or is expected to enter commercial service.~~

~~(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.~~

~~(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and~~

~~should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).~~

~~(F) Upon receipt of a request for certification, OED staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. OED may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.~~

~~(G) OED will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, OED will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.~~

~~(H) Consistent with Title 63G, Chapter 4 (Administrative Procedures Act), upon its decision to grant or deny a certification request, OED will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.~~

R362-2-16. Granting of Production Tax Credits.

~~(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, OED must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to OED information regarding the following:~~

- ~~1. The date that the commercial energy system first entered commercial service;~~
- ~~2. The beginning and ending dates of the company's tax year;~~
- ~~3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.~~

~~All such information will be provided on a standard claim form created by OED.~~

~~(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to OED invoices or other information that documents that number of kilowatt hours of electricity sold.~~

~~(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. OED will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.~~

~~(D) Once it has received a production tax credit claim from a company, OED will make a determination as to:~~

- ~~1. Whether the information provided conforms with this rule and is complete;~~
- ~~2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;~~
- ~~3. The number of kilowatts deemed to be valid;~~
- ~~4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.~~

~~(E) A company claiming a production tax credit must submit the information specified above to OED on or before the date the tax~~

NOTICES OF PROPOSED RULES

return on which the credit is claimed is required to be filed with the State Tax Commission. Once OED has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either OED or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If OED denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC 63G-2-305(1) and/or UC 63G-2-305(2) when the applicant provides OED with a written claim of confidentiality and a concise statement supporting the claim, consistent with UC 63G-2-309(1)(a)(i). OED shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.]

(1) This rule implements the responsibilities assigned to the Utah Governor's Office of Energy Development (OED) for the renewable energy systems tax credit programs in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(2) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(3) This rule also establishes procedures for taxpayers to use when applying for OED certification of tax credit eligibility and tax credit amounts, and for OED to follow in reviewing such applications.

R362-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the OED may make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers.

R362-2-3. Definitions.

The definitions below are in addition to or serve to clarify the definitions in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(1) "Active solar thermal systems" include systems that can do one of the following:

(a) heat water for space heating, culinary water, recreational use including swimming pools and other industrial or commercial uses;

(b) heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; or

(c) heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling;

(d) active solar thermal systems do not include systems that use heat for evaporative cooling.

(2) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

(a) A biomass system does not include biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants.

(b) To be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(3) "Commercial energy system" means any renewable energy system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes interconnected components that:

(a) were assembled or constructed at approximately the same time as part of a single project; and

(b) supply electricity to a common grid interconnection point.

(4) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(5) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit that is contained in the earth to meet energy needs including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. It may include systems that make use of groundwater or those that inject water into the earth to derive heat. It can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(6) "Eligible cost" means a cost that is incurred for the purchase and installation of a renewable energy system, and that may be used in calculating the amount of either a commercial or residential investment tax credit.

(7) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(8) "Placed in commercial service" means the commercial operations date (COD) when the commercial energy system is no longer testing functionality of a new commercial energy system and is selling produced electricity at a non-discounted price.

(9) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(10) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity. Solar PV energy systems include solar attic fans.

(11) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

R362-2-4. Investment Tax Credit Certification Process.

(1) OED is responsible for certifying renewable energy systems tax credits.

(2) Applications for credits shall be made on forms developed by OED.

(3) OED will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained in an application is inadequate to determine eligibility according to this rule, OED reserves the right to request additional information from the applicant. If an applicant is unable or

unwilling to provide adequate information, OED may deny the application and no tax credit will be certified.

(4) If, after evaluating an application, OED finds that a renewable energy system is eligible for a residential or commercial tax credit, OED will issue a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit.

(5) If OED denies an application for a tax credit, the taxpayer applicant may appeal, consistent with Section 63G-4-301 (Administrative Procedures Act).

(6) Applications for credits under this rule shall provide the following information:

(a) The legal name of the person seeking a tax credit;

(b) The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed; and

(c) A general description of the system, including:

(i) type of technology employed;

(ii) energy production capacity;

(iii) cost of the system;

(iv) date installation was completed; and

(v) other information requested by OED.

(7) Applications for residential and commercial tax credits must include each of the following:

(a) Photographs of the major system components, and how and where the system is installed; and

(b) Documentation of costs incurred for the renewable energy system.

R362-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(1) Eligible costs for equipment are limited to system components that are necessary for the production of renewable energy and to deliver that energy for end-use.

(2) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(3) Costs for equipment and installation of components on existing renewable energy systems are eligible only if the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(4) Each major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and built or manufactured for the intended application.

(5) Costs for the installation of a renewable energy system are eligible. The estimated value of a taxpayer's own labor is not to be considered when calculating eligible costs.

(6) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not utilize a renewable energy source are not eligible costs.

(7) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other rebate shall be not be considered an eligible cost for calculating residential or commercial tax credits. However, any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(8) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule below.

R362-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(1) Eligible costs for active solar thermal energy systems must conform with Section R362-2-5 and meet the requirements contained in this section.

(2) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional heating system. Eligible equipment costs include:

(a) solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

(b) thermal storage devices such as tanks or heat sinks;

(c) ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems; and

(d) hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity.

R362-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(1) Eligible costs for solar PV energy systems must conform with Section R362-2-5 and meet the requirements contained in this Section.

(2) To be eligible for a residential or commercial tax credit, a solar PV energy system must comply with all local building or zoning ordinances.

(3) Grid connected systems must meet all interconnection standards of the local electrical utility.

R362-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(1) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. All passive solar systems should contain the following to be eligible:

(a) A means to allow the solar energy to enter the system;

(b) A heat-absorbing surface;

(c) A thermal storage mass located within the conditioned space;

(d) A heat transferal system or mechanism; and

(e) protection from summer overheating and excessive winter heat-loss.

(2) A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(3) Eligible costs for a passive solar system include the costs of the following:

(a) trombe wall;

(b) water wall;

(c) thermosyphon;

(d) equipment or building shell components providing direct heat gain; and

(e) any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed

to be used as an integral part of the passive solar system and not part of the conventional building design.

(3) The cost of a solarium is eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed to prevent summer heating that would increase the load on the building's cooling system.

(4) The cost of windows and other glazing devices are eligible only if they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building.

(5) The cost of heat transportation systems shall be eligible if they are part of the passive solar design and will not be used as part of a conventional heating system.

R362-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(1) All eligible costs for wind energy systems must conform with Section R362-2-5 and meet the requirements contained in this Section.

(2) To be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances.

(3) Grid connected systems must meet all interconnection standards of the local electrical utility.

R362-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(1) Eligible costs for geothermal heat pump systems must conform with Section R362-2-5 and meet the requirements contained in this Section.

(2) Costs incurred for the drilling of wells or excavating trenches are eligible if used within the final system for the exchange of heat with the ground. The costs of exploratory wells or trenches that are not used within the final system are not eligible.

(3) Design costs for a geothermal heat pump system are eligible but only for the components of the system that are not associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

R362-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(1) Eligible costs for geothermal electric systems must conform with Section R362-2-5 and meet the requirements in this Section.

(2) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power.

(3) Eligible equipment costs include:

- (a) production and injection wells and well casings;
- (b) wellhead pumps, and turbine generators;
- (c) flash tanks;
- (d) flash steam systems;
- (e) heat exchangers
- (f) binary cycle systems; and
- (g) condensers and associated pumps.

(4) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of

the system that are listed in (3) above. Tax credit applications must separate design costs for the geothermal and conventional components of the system.

(5) Costs for studies to characterize a geothermal resource are eligible if a final system using the geothermal resource is built and placed into operation.

(6) Costs incurred for the drilling of wells are eligible if the wells are actually used within the final geothermal electrical system. The costs of exploratory wells that are not used within the final system are not eligible.

R362-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(1) Eligible costs for direct use geothermal systems must conform with Section R362-2-5 and meet the requirements contained in this Section.

(2) Eligible costs for a direct use geothermal system are limited to components that are not associated with a conventional hot water heating system.

(3) Eligible equipment costs include:

- (a) wells and well casings;
- (b) wellhead pumps; and
- (c) heat exchangers where well water is not directly used within a building or a manufacturer's heating system.

(4) Equipment and components beyond the wellhead or a heat exchanger, are not eligible. Water treatment equipment that would permit the direct use of well water within a heating system is eligible.

(5) Design costs for a direct use geothermal system are eligible only if the components of the system would not normally be associated with a conventional hot water heating system. Tax credit applications must separate design costs for the geothermal and conventional components of the system.

(6) Costs for studies to characterize a geothermal resource are eligible if a final system using the geothermal resource is built and placed into operation.

(7) Costs incurred for the drilling of wells are eligible if the wells are actually used, whether for withdrawal or reinjection of water, within the final direct use geothermal system. The costs of exploratory wells that are not used within the final system are not eligible.

R362-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(1) Eligible costs for hydroenergy systems must conform with Section R362-2-5 and meet the requirements contained in this Section.

(2) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power.

R362-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(1) Eligible costs for biomass systems must conform with Section R362-2-5 and meet the requirements contained in this Section.

(2) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials or the storage of biomass materials at a location separate from the facility at which electricity or fuel is produced. Eligible costs do not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(3) If the biomass systems produce fuels, eligible system costs include the costs of equipment to receive, handle, collect,

condition, store, process, and convert biomass materials into fuels at the processing site.

(4) Grid connected systems must meet all interconnection standards of the local electrical utility.

R362-2-15. Production Tax Credit, Taxpayer Authorization Process.

(1) OED must authorize a taxpayer's eligibility for the production tax credit. The taxpayer must verify that a commercial energy system has been constructed, installed, is a viable energy production system, and meets requirements of Sections 59-7-614 and 59-10-1106 and this rule.

(2) A taxpayer that is not a lessee must submit an Application for Authorization on a form created by OED.

(3) The applicant must provide the following information:

(a) taxpayer name and federal tax classification;

(b) taxpayer address, phone number and contact information for a taxpayer representative;

(c) description of the commercial energy system including type of facility, total nameplate capacity, methods to be used to produce electricity and a list of major electricity producing components;

(d) location of the commercial energy system sufficient to permit site inspection by OED staff;

(e) schematic or electrical layout of major system components. A solar PV system must include a map of where the solar panels are installed. A wind farm must include a map of the turbine layout. A geothermal system must include a map showing production and injection wells along with the location of the generating turbine or turbines;

(f) photographs of the installed and operational commercial energy system;

(g) estimated annual electricity production in kilowatt hours for the commercial energy system; and

(h) the date on which the commercial energy system entered commercial service. 48 month eligibility period begins on the commercial operations date.

(3) A taxpayer that is a lessee must submit an Application for Authorization that includes the following:

(a) proof that the lessor's commercial energy system has been authorized by OED; and

(b) written certification that the lessor shall not claim production tax credits.

(4) Upon receipt of an Application for Authorization, OED will determine taxpayer eligibility and will notify the applicant in writing of its decision. If the information contained in an application is inadequate to determine eligibility, OED reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide the information requested, OED may deny the Application for Authorization.

R362-2-16. Production Tax Credit, Annual Certification Process.

(1) A taxpayer authorized by R362-2-15 to claim a production tax credit for the electricity produced in a calendar year on a return filed under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, must receive written certification from OED for each year the project produced electricity within the 48-month eligibility period.

(2) An authorized taxpayer shall submit a Request for Production Tax Credit Certification form to OED and provide the following information:

(a) project name;

(b) location of commercial energy system;

(c) taxpayer name and address;

(d) name and contact information for taxpayer representative;

(e) commercial operations date;

(f) the number of kilowatt hours produced during the calendar year;

(g) copies of invoices or other information that documents the number of kilowatt hours of electricity produced; and

(h) additional information necessary for OED to validate the Request.

(3) Upon receipt of a complete application OED will review and validate the information provided by the authorized taxpayer. If approved, OED will issue a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's written certification to claim the tax credit.

(4) If the information contained within an application is inadequate, OED reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide the information, OED may deny the application and no tax credit will be certified. If OED denies a Request for Production Tax Credit Certification the authorized taxpayer may appeal, consistent with Section 63G-4-301 (Administrative Procedures Act).

(5) Information submitted by an authorized taxpayer under this section will be classified as protected information defined in Utah Code Section 63G-2-305 if the authorized taxpayer provides OED with a written claim of confidentiality and a concise statement supporting the claim in accordance with consistent with Utah Code Section 63G-2-309(1)(a)(i). The written claim of confidentiality will be included in the Request for Production Tax Credit Certification form referenced in this Rule.

KEY: energy, renewable, tax credits, solar

Date of Enactment or Last Substantive Amendment: ~~January 22, 2014~~ 2020

Notice of Continuation: December 18, 2017

Authorizing, and Implemented or Interpreted Law: 59-7-614; 59-10-1014; 59-10-1106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R547-13	Filing No. 52793

Agency Information

1. Department:	Human Services	
Agency:	Juvenile Justice Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Nate Winters	801-538-4312	natewinters@utah.gov

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

General Information

2. Rule or section catchline:

R547-13. Guidelines for Admission to Secure Youth Detention Facilities

3. Purpose of the new rule or reason for the change:

H.B. 262, passed in the 2020 General Session, changed the law to prohibit the prosecution of children under 12 years old except for certain offenses. In accordance with this statute change, the Division of Juvenile Justice Services (Division) is changing the detention guidelines to reflect this bill and clarifying some other aspects of detention, home detention, and diversion programs.

4. Summary of the new rule or change:

This filing amends the detention guidelines to reflect H.B. 262 (2020) while clarifying some other aspects of detention, home detention, and diversion programs.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The implementation of these standards may provide a net savings of \$128,100 ongoing from the General Fund beginning in FY 2021. Due to reduced case processing, it is estimated that the Division may see a savings of \$73,100 and the Courts may see a \$55,000 ongoing savings. These savings were already captured by the legislature.

B) Local governments:

The standards set forth through this rule may save local governments an inestimable amount due to reduced prosecution and defense costs.

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

Small businesses will not see a fiscal impact as these practices do not impact small businesses.

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

Non-small businesses will not see a fiscal impact as these practices do not impact 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**):

It is not estimated that persons other than small businesses, non-small businesses, state, or local government entities, will see a fiscal impact; as these changes will not impact the practices in place for this population.

F) Compliance costs for affected persons:

No compliance costs are anticipated for affected persons.

G) 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	FY2021	FY2022	FY2023
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	\$128,100	\$128,100	\$128,100
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	\$128,100	\$128,100	\$128,100

H) Department head approval of regulatory impact analysis:

The Executive Director of Human Services, Ann Williamson, after conducting a thorough analysis, has determined that this proposed amendment will result in a fiscal impact for the state.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Non-small businesses will not see a fiscal impact as these practices do not impact small businesses.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director.

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-1-111	Section 78A-6-105
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ann Williamson, Executive Director.	Date:	05/19/2020
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R547. Human Services, Juvenile Justice Services.

R547-13. Guidelines for Admission to Secure Youth Detention Facilities.

R547-13-1. Authority.

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-13-2. Purpose and Scope.

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.

(2) This rule shall be applied to youth candidates for placement in ~~any~~ secure detention facilities operated by the Division of Juvenile Justice Services.

R547-13-3. Definitions.

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78A-6-105.

(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(3) "Youth" means a person age 10 or over and under the age of 21.

R547-13-4. General Rules.

(1) ~~[A youth age 10 or 11 may be detained in a secure detention facility if arrested for any felony violation of Section 76-3-203.5(e), violent felony]~~ A youth under the age of 12 may not be detained in a secure detention facility, unless the youth is arrested for any of the following state or federal equivalent criminal offenses:

(a) ~~Section 76-5-103, aggravated assault resulting in serious bodily injury to another;~~

(b) ~~Section 76-5-202, aggravated murder or attempted aggravated murder;~~

(c) ~~Section 76-5-203, murder or attempted murder;~~

(d) ~~Section 76-5-302, aggravated kidnapping;~~

(e) ~~Section 76-5-405, aggravated sexual assault;~~

(f) ~~Section 76-6-103, aggravated arson;~~

(g) ~~Section 76-6-203, aggravated burglary;~~

(h) ~~Section 76-6-302, aggravated robbery; or~~

(i) ~~Section 76-10-508.1, felony discharge of a firearm.~~

(2) Notwithstanding subsection (1) of this rule, no youth under the age of 10 may be detained in a secure detention facility.

(3) A youth age 12 or over may be detained in a secure detention facility if:

(a) ~~[A]~~ a youth is arrested for any of the following state or federal equivalent criminal offenses:

(i) ~~[A]~~ any offense ~~[which]that~~ would be a felony if committed by an adult;

(ii) ~~[A]~~ any attempt, conspiracy, or solicitation to commit a felony offense;

(iii) ~~[A]~~ any class A misdemeanor violation of 76-5 Part 1, offense against the person; assault and related offenses;

(iv) ~~[A]~~ any class A or B misdemeanor violation of Section 76-10-5, ~~[Part]5~~, offenses against public health, safety, welfare, and morals; weapon offenses];

(v) ~~[A]~~ a class A misdemeanor violation of Section 76-5-206, negligent homicide;

(vi) ~~[A]~~ a class A misdemeanor violation of Section 58-37-8(1)(b)(iii), a controlled substance violation;

(vii) ~~[A]~~ any criminal offense defined as domestic violence (cohabitant) by Subsections 77-36-1(4), and 78B-7-102(2) and (3);

(viii) ~~[A]~~ a class A or B misdemeanor violation of Subsection 76-6-104(1)(a) or (b), reckless burning ~~[which]that~~ endangers human life;

(ix) ~~[A]~~ a class A misdemeanor violation of Section 76-6-105, causing a catastrophe;

(x) ~~[A]~~ a class A misdemeanor violation of Subsection 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life;

(xi) ~~[A]~~ a class A misdemeanor violation of Section 76-6-406, theft by extortion;

(xii) ~~[A]~~ a class A misdemeanor violation of Section 76-9-702.1, sexual battery;

NOTICES OF PROPOSED RULES

(xiii) [A]a class A misdemeanor violation of Subsection 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity;

(xiv) [A]a class A misdemeanor violation of Section 76-9-702.5, lewdness involving a child;

(xv) [A]a class A misdemeanor violation of Subsection 76-9-702.7(1), voyeurism with recording device;

(xvi) [A]a class A misdemeanor violation of Subsection 41-6A-401.3(2), leaving the scene of an accident involving injury; and

(xvii) [A]a class A misdemeanor violation of Subsection 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury; driving under the influence with a passenger under 16 years of age.

(b) The youth is an escapee or absconder from a Juvenile Justice Services secure facility or community placement.

(c) The youth has been verified as a fugitive, [a]absconder from probation or parole[)], or a runaway from another state and a formal request has been received, [a]such as a TWX/National Crime Information Center (NCIC) or a telephone call[, FAX[, or email from a law enforcement officer or a verified call[, FAX[, or email from the institution[)], to hold, pending return to the other jurisdiction, whether or not an offense is currently charged.

(4[3]) A youth not otherwise qualified for admission to a secure detention facility [shall]may not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy; or

(d) attempted suicide.

[~~_____ (4) No youth under the age of ten years may be detained in a secure detention facility.~~]

R547-13-5. Juvenile Court Warrants for Custody or Pickup Orders.

A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.

R547-13-6. Juvenile Justice Services' Cases.

A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

R547-13-7. DCFS Cases.

A youth in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.

R547-13-8. Traffic Cases.

A youth brought to detention for traffic a violation[~~(s)~~] cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.

R547-13-9. Interstate Cases.

(1) Out-of-state youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of

Subsection R547-13-4(2)(c).

(2) Youth who are out-of-state runaways who commit any non-status criminal offense[~~(s)~~] may be admitted to a secure detention facility.

(3) Out-of-state, non-runaway youth, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria [which]that applies to resident youth.

R547-13-10. Immigration Cases.

A youth may be detained at a secure detention facility when a lawful detainer or order is presented by United States Immigration and Customs Enforcement (ICE).

R547-13-11. AWOL Military Personnel.

Absent without leave (AWOL) military personnel who are minors shall be admitted to a secure detention facility.

R547-13-12. Home Detention.

(1) In accordance with Section 62A-7-202, the division establishes the following guidelines for use of home detention:

(2) Home detention is a court ordered program that is an alternative to being placed into secure detention. The youth and parent or guardian shall sign the home detention rules and expectations prior to being released from secure detention.

(3) JJS staff will monitor the youth's compliance to the home detention rules and expectations and additional "special conditions" ordered by the Juvenile Court.

(4) JJS will provide probation weekly updates on the youth's behavior and compliance on home detention.

R547-13-13[2]. Home Detention [Cases]Violations.

(1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility, request a warrant for custody, or request an expedited detention hearing to review the violations.

(2) If the case involves a violator who is a runaway where a warrant for custody or pickup order [Warrant for Custody] has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.

(3[2]) A youth placed on home detention who is arrested by a law enforcement officer for an alleged non-status criminal offense[~~(s)~~] shall be admitted to a secure detention facility.

R547-13-14[3]. Probation Violation - Contempt of Court - Stayed Order for Detention.

A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

R547-13-15[4]. Other Court Orders for Detention.

A youth brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

R547-13-16. Detention Risk Assessment Tool.

(1) Youth who meet the detention admission guidelines shall receive the "Detention Risk Assessment Tool" (DRAT) to inform placement decisions. Youth that score below the cutoff on the DRAT will be "diverted" and not admitted to locked detention.

(2) Youth and parent or guardian will sign an "Alternative to Detention Contract" (ADC) prior to leaving detention. If the parent or guardian is unavailable, the youth will sign the ADC and be transported to the local Youth Services Center.

(3) JJS staff will create a supervision plan based on the youth's recent behavior in the community, school and home. The level of supervision may include the following based on the current needs:

- (a) parent or guardian restrictions;
- (b) JJS staff supervision; and
- (c) youth services crisis residential.

(4) Youth and parent or guardian will be given a commitment to appear at meetings with probation and the Juvenile Court, and the youth's behavior and compliance to the contract will be reported to the Juvenile Court.

R547-13-17. Authority of the Division.

To the extent permitted by this Rule and by law, the Director has full authority to limit or adjust individual admissions to a secure detention facility.

KEY: juvenile corrections, juvenile detention, admission guidelines, juvenile justice services

Date of Enactment or Last Substantive Amendment: [September 26, 2017]2020

Notice of Continuation: March 27, 2017

Authorizing, and Implemented or Interpreted Law: 62A-7-202; 78A-6-112; 78A-6-113

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-131	Filing No. 52794

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	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:
The rule is being amended to make a clarification, add an exception, and make several stylistic changes to bring the rule into compliance with the Utah Rulewriting Manual.
4. Summary of the new rule or change:
The changes include a clarification to address coverage for adult dependents who do not live at home, to add an exception for a blanket accident-only policy to provide coverage as excess or always secondary, and numerous renumberings and changes to bring the rule into compliance with the Utah Rulewriting Manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The state budget may see some savings as a result of this rule. The exception in Subsection R590-131-8(2) is expected to result in an approximate \$600,000 annual savings to university athletic programs. Because several of Utah's universities are publicly funded, this money may be saved. However, the Department of Insurance (Department) does not know the funding mechanisms behind how university funds are used and so cannot determine if or how much money will actually be saved.
B) Local governments:
There is no anticipated cost or savings to local governments. The most significant changes affect insurers, and the others are merely clerical.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The most significant changes affect insurers, and the others are merely clerical.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Insurers will be required to file new forms with the Department. However, these forms can be incorporated into their annual filing process, which will result in a negligible cost to comply.
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 most significant changes affect insurers, and the others are merely clerical.

F) Compliance costs for affected persons:

Insurers will be required to file new forms with the Department. However, these forms can be incorporated into their annual filing process, which will result in a negligible cost to comply.

G) 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	FY2021	FY2022	FY2023
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	\$600,000	\$600,000	\$600,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$600,000	\$600,000	\$600,000
Net Fiscal Benefits	\$600,000	\$600,000	\$600,000

H) Department head approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The above analysis represents the Insurance

Department's best estimate of the fiscal impact that this rule may have on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Todd E. Kiser, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 31A-2-201	Section 31A-22-619	
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/15/2020

10. This rule change MAY become effective on: 07/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer I	Date:	05/26/2020
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R590. Insurance, Administration.

R590-131. Accident and Health Coordination of Benefits Rule.

R590-131-1. Authority.

This rule is adopted and promulgated pursuant to Subsection 31A-2-201(3)(a) and Section 31A-22-619.

R590-131-2. Purpose and Applicability.

[A-](1) The purpose of this rule is to: [A-](a) establish a uniform order of benefit determination under which a plan[s pay] pays a coordination of benefit claim[s];

~~(2-)~~(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; and

~~(3-)~~(c) provide greater efficiency in the processing of a claim[s] when a person is covered under more than one plan.

~~(B-)~~(2) This rule applies to ~~any~~ accident and health insurance plan[s] 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[s] 31A-1-301 ~~and 31A-30-103~~, and the following:

~~(A-)~~(1) "Allowable Expense" means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

~~(4-)~~(a) If an insurer is advised by a covered person that ~~the~~ each plan[s] covering the person ~~are~~ is a high-deductible health plan[s] and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in Section 223(c)(2)(C) of the Internal Revenue Code of 1986.

~~(2-)~~(b) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

~~(3-)~~(c) Any expense that a provider, by law or in accordance with a contractual agreement, is prohibited from charging a covered person is not an allowable expense.

~~(4-)~~(d) The following are examples of expenses that are not allowable expenses:

~~(a-)~~(i) If a person 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 private hospital room expenses.

~~(b-)~~(ii) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or 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.

~~(e-)~~(iii) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

~~(d-)~~(iv) If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees, relative value schedule reimbursement, or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for ~~the~~ each of the plans. However, if the provider has contracted 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 drug, 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, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

~~(g-)~~ The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan because the covered person does not comply with the plan provisions concerning a second surgical opinion[s] or pre-certification of admissions or services.

~~(B-)~~(2) "Birthday" refers only to month and day in a calendar year and does not include the year in which the person was born.

~~(C-)~~(3) "Child" means a:

~~(4-)~~(a) child as defined in Section 78B-12-102; or

~~(2-)~~(b) dependent child that is provided coverage pursuant to Sections 31A-22-610, 31A-22-610.5, and 31A-22-611.

~~(D-)~~(4) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

~~(4-)~~(a) services, ~~(including supplies)~~;

~~(2-)~~(b) payment for all or a portion of the expenses incurred;

~~(3-)~~(c) a combination of ~~(1) and (2) above~~ Subsections R590-131-3(4)(a) and R590-131-3(4)(b); or

~~(4-)~~(d) an indemnification.

~~(E-)~~(5) "Closed Panel Plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by a plan, and that excludes benefits for services provided by other providers, except in the cases of emergency or referral by a panel member.

~~(F-)~~(6) "Conforming Plan" means a plan that is subject to this rule.

~~(G-)~~(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.

~~(H-)~~(8) "Coordination of Benefits" or "COB" means a provision establishing an order in which plans pay their coordination of benefit claims, and permitting secondary plans to reduce their benefits so that the combined benefits of ~~all plans do~~ each plan does not exceed total allowable expenses.

~~(I-)~~(9) "Custodial Parent" means:

~~(4-)~~(a) the legal custodial parent or physical custodial parent as awarded by a court decree; or

~~(2-)~~(b) in the absence of a court decree, the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation.

~~(J-)~~(10)(a) "Group-type contract" means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage.

~~(2-)~~(b) Group-type contract does not include 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 the right to maintain or renew the policy independently of continued employment with the employer.

~~(K-)~~(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.

~~(L-)~~(12) "Hospital Indemnity Benefits" means benefits not related to expenses incurred. The term does not include reimbursement-

NOTICES OF PROPOSED RULES

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.

~~[M-]~~(13) "Non-conforming Plan" means a plan that is not subject to this rule.

~~[N-]~~(14) "Plan" means a form of coverage with which coordination is allowed.

~~[1-]~~(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.

~~[2-]~~(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.

~~[3-]~~(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."

~~[4-]~~(d) Plan shall include:

~~[a-]~~(i) individual and group accident and health insurance contracts and subscriber contracts except as provided by Subsection R590-131-3(14)(e)~~[N-]~~5;

~~[b-]~~(ii) uninsured arrangements of group or group-type coverage;

~~[c-]~~(iii) coverage through closed panel plans;

~~[d-]~~(iv) group-type contracts;

~~[e-]~~(v) medical care components of long-term care contracts, such as skilled nursing care; and

~~[f-]~~(vi) Medicare or other governmental benefits, as permitted by law.

~~[5-]~~(e) Plan ~~[shall]~~may not include:

~~[a-]~~(i) hospital indemnity coverage benefits or other fixed indemnity coverage;

~~[b-]~~(ii) accident only coverage;

~~[c-]~~(iii) specified disease or specified accident coverage;

~~[d-]~~(iv) limited benefit health coverage, as defined in Rule R590-126;

~~[e-]~~(v) school accident-type coverages that cover students for accidents only, including athletic injuries, either on a ~~[twenty-four]~~24-hour basis or on a "to and from school" basis;

~~[f-]~~(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;

~~[g-]~~(vii) Medicare supplement policies;

~~[h-]~~(viii) a state plan under Medicaid; or

~~[i-]~~(ix) a governmental plan~~[s-which]~~ that, by law, provides benefits that are in excess of those of any private insurance plan or other non-governmental plan.

~~[O-]~~(15) "Policyholder" means the primary insured named in a non-group insurance policy.

~~[P-]~~(16) "Primary Plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

~~[1-]~~(a) the plan has no order of benefit determination;

~~[2-]~~(b) its rules differ from those permitted by this rule; or

~~[3-]~~(c) ~~[all]~~each plan~~[s-which]~~ that covers the person use the order of benefit determination provisions ~~[of this rule-]~~in Section R590-131-6 and under those requirements the plan determines its benefits first.

~~[Q-]~~(17) "Retiree employee benefit plan" means an employee benefit plan as defined in 29 U.S.C. 1002(3).

~~[R-]~~(18) "Secondary Plan" means any plan~~[s-which]~~ that is not a primary plan.

~~[S-]~~(19) "Separated" means married persons who are legally separated.

R590-131-4. COB Contract Provisions.

~~[A-]~~(1) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

~~[1-]~~(a) another plan exists and the covered person did not enroll in that plan;

~~[2-]~~(b) a person is or could have been covered under another plan, except with respect to a retiree employee benefit plan; or

~~[3-]~~(c) a person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

~~[B-]~~(2) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider for either plan.

~~[1-]~~(a)(i) In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans.

~~(ii)~~ The closed panel plan whose providers were not used~~[s-]~~ has no liability.

~~[2-]~~(b)(i) COB may occur during the plan year when the covered person receives services from a provider who is on each closed panel, or emergency services that would have been covered by both plans.

~~(ii)~~ The secondary plan shall use the provisions of Section R590-131-7 to determine the amount it should pay for the benefit.

~~[C-]~~(3) No plan may use a COB provision~~[s-]~~ or any 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.

R590-131-5. Rules for Coordination of Benefits.

When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

~~[A-]~~(1) The primary plan shall pay or provide its benefits as if the secondary plans or plan did not exist.

~~[B-]~~(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 emergency services or authorized referrals that are paid or provided by the primary plan.

~~[C-]~~(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.

~~[D-]~~(5) If a person is covered by more than one secondary plan, benefits are determined using the rules in Section R590-131-6~~[E-]~~, 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.

~~[E-1-]~~(6)(a) Except as provided in Subsection R590-131-5(6)(b)~~[E-2-]~~, a plan that does not contain order of benefit determination provisions that are consistent with this regulation is always the primary plan unless the provisions of both plans, regardless of the provisions of this subsection, state that the complying plan is primary.

~~[2-](b)~~ Coverage that is obtained by virtue of membership in a group and designed to supplement a part of 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 major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

~~[F-](7)~~ A plan may take into consideration the benefits paid or provided by another plan only when, under ~~[the rules of this regulation]~~this rule, it is secondary to that other plan.

R590-131-6. Determining Order of Benefits.

Each plan shall determine[s] its order of benefits using the first of the following rules that apply:

~~[A-](1)~~ Non-dependent or Dependent.

The plan that covers the person other than as a dependent, such as an employee, member, policyholder retiree or subscriber, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

~~[B-](2)~~ Child Covered Under More Than One Plan.

Unless there is a court decree stating otherwise, a plan[s] covering a child shall determine the order of benefits as follows:

~~[+](a)~~ For a child whose parents are married or living together if they have never been married:

~~[a-](i)~~ The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

~~[b-](ii)~~ If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

~~[2-](b)~~ For a child whose parents are divorced or separated or are not living together if they have never been married:

~~[a+](i)(A)~~ If a court decree 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 primary.

~~[ii-](B)~~ If the parent with responsibility has no health care coverage for the child's health care expenses, but the spouse of the responsible parent does have health care coverage for the child's health care expenses, the responsible parent's spouse's plan is the primary plan.

~~[b-](ii)~~ If a court decree 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)~~[B-+]~~ shall determine the order of benefits.

~~[e-](iii)~~ If a court decree 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)~~[B-+]~~ shall determine the order of benefits.~~[+e-]~~

~~[d-](iv)~~ If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows:

~~[+](A)~~ the plan covering the custodial parent;

~~[ii-](B)~~ the plan covering the custodial parent's spouse;

~~[iii-](C)~~ the plan covering the non-custodial parent; and then

~~[iv-](D)~~ the plan covering the non-custodial parent's spouse.

~~[e-](v)~~ For a child covered under more than one plan, and one or more of the plans provides coverage for individuals who are not the parents of the child, such as a guardian, the order of benefits shall be determined under Subsection R590-131-6(2)(a) or R590-131-6(2)(b)~~[B-+ or 2-]~~ as if those individuals were parents of the child.

~~[C-](3)~~ Active, Retired, or Laid-Off Employee.

~~[+](a)~~ The plan that covers a person as an active employee who is neither laid off, nor retired, nor a dependent of an active

employee, is the primary plan~~[+]~~, and the plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

~~[2-](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.

~~[3-](c)~~ ~~[This]~~Subsection R590-131-6(3) does not apply if ~~[the rule in]~~Subsection R590-131-6(1)~~[A-]~~ can determine the order of benefits.

~~[D-](4)~~ COBRA or State Continuation Coverage.

~~[+](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.

~~[2-](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.

~~[3-](c)~~ ~~[This rule]~~Subsection R590-131-6(3) does not apply if ~~[the rule in]~~Subsection R590-131-6(1)~~[A-]~~ can determine the order of benefits.

~~[E-](5)~~ Longer or Shorter Length of Coverage.

~~[+](a)~~ If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

~~[2-a-](b)(i)~~ To determine the length of time a person has been covered under a plan, two successive plans shall be treated as one if the claimant was eligible under the second within 24 hours after coverage under the first plan ended.

~~[b-](ii)~~ The start of a new plan does not include:

~~[+](A)~~ a change in the amount or scope of a plan's benefits;

~~[ii-](B)~~ a change in the entity that pays, provides or administers the plan's benefits; or

~~[iii-](C)~~ a change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

~~[e-](iii)~~ The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available, the date the person first became a member of the group shall be used as the date ~~[from which]~~to determine the length of time the person's coverage under the present plan has been in force.

~~[F-](6)~~ If ~~[none of the above rules]~~Section R590-131-6 cannot determine the primary plan, the allowable expenses shall be shared equally between the plans.

~~[G-](7)~~ If the plans cannot agree on the order of benefits within 30 calendar days after the plans have received ~~[all of]~~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.

R590-131-7. Procedure to be Followed by Secondary Plan to Calculate Benefits and Pay a Claim.

~~[A-](1)~~ ~~[In determining the amount to be paid by the secondary plan on a claim,]~~If a secondary plan wishes to coordinate benefits, the secondary plan shall calculate the benefits~~[, should the secondary plan wish to coordinate benefits,]~~ it would have paid on the claim in the absence of other health care coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan.

NOTICES OF PROPOSED RULES

~~B-~~(2) The secondary plan may reduce its payment amount so that when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim do not exceed 100% of the total allowable expense for that claim.

~~C-~~(3) The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

R590-131-8. Miscellaneous Provisions.

~~A-~~(1) Reasonable Cash Value of Services.

~~1-~~(a) A secondary plan ~~which~~ that provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

~~2-~~(b) Nothing in this provision may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan, which provides benefits in the form of services.

~~B-~~(2) Excess and Other Provisions.

~~1-~~(a) Except as provided in Subsection R590-131-8(2)(b), no~~No~~ policy or plan subject to this rule may contain a provision that its benefits are "excess" or "always secondary" to any other plan or policy.

~~2-~~(b) An accident-only blanket policy may contain a provision that its benefits are "excess" or "always secondary" to any other plan or policy.

~~c-~~ A plan with COB rules ~~which~~ that comply with these rules, which is called a conforming plan, may coordinate benefits with a plan ~~which~~ that is "excess" or "always secondary" or ~~which~~ that uses COB rules inconsistent with this rule, which is called a non-conforming plan, on the following basis:

~~a-~~(i) if the conforming plan is the primary plan, it shall pay or provide its benefits on a primary basis;

~~b-~~(ii) 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, the payment shall be the limit of the conforming plan's liability;~~and~~

~~e-~~(iii) 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~~-F-~~;

~~iv-~~ if ~~within three years of payment,~~ the conforming plan receives information as to the actual benefits of the non-conforming plan, it ~~shall~~ may adjust any payments ~~accordingly~~ in compliance with Subsection 31A-26-301.6(14)(a)(ii); and

~~d-~~(v)(A) ~~F-~~ if the non-conforming plan reduces its benefits so that the covered person receives less in benefits than the covered person 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, or on behalf of the covered person, an amount equal to such difference.

~~ii-~~(B) 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.

~~iii-~~(C) In consideration of such advance, the conforming plan shall be subrogated to all rights of the covered person against the non-conforming plan in the absence of subrogation.

~~C-~~(3) If the plans cannot agree on the order of benefits within ~~thirty~~ 30 calendar days after the plans have received ~~all of~~ 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[s].

~~D-~~(4) Subrogation.

COB clearly differs from subrogation. Provisions for one may be included in health care benefit contracts without compelling the inclusion or exclusion of the other.

~~E-~~(5) Right To Receive and Release Needed Information.

~~a-~~ Certain facts are needed to apply these COB rules~~-A-~~ and an insurer has the right to decide ~~which~~ the facts it needs.

~~b-~~ An insurer~~H-~~ may obtain needed facts from or give them to any other organization or person~~-An insurer~~ and it need not tell or obtain consent from any person to do this.

~~c-~~ To facilitate cooperation with insurers~~s-~~, guidelines for medical privacy issues are provided under ~~U.A.R-~~Rule R590-206, and Title V of Gramm-Leach-Bliley Act of 1999.

~~d-~~ Each person claiming benefits under a plan shall give the insurer any facts it needs to pay the claim.

~~F-~~(6) Right of Recovery.

~~1-~~(a) If the amount of the payments made by an insurer is more than it should have paid under the provisions of this rule, subject to Section 31A-26-301.6, it may recover the excess paid from one or more of the following, if they were paid by the insurer:

- ~~a-~~(i) an insured;
- ~~b-~~(ii) a non-contracted provider;
- ~~e-~~(iii) a contracted provider;
- ~~d-~~(iv) other insurance companies; or
- ~~e-~~(v) other organizations.

~~2-~~(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.

~~3-~~(c) It is the insurer's responsibility to see that the proper adjustments between insurers and providers are made.

~~G-~~(7) Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one health benefit plan, you should file all your claims with each plan."

~~H-~~(8) If otherwise covered benefits are due to a loss subject to 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:

~~1-~~(a) personal injury protection benefit provided by motor vehicle insurance; or

~~2-~~(b) minimum amount required by Section 31A-22-307, if motor vehicle insurance is not in effect.

~~1-~~(9) Facility of Payment.

~~a-~~ A payment made under another plan may include an amount~~-which~~ that should have been paid under the plan~~-F-~~, and if it does, the insurer may pay that amount to the organization ~~which~~ that made that payment.

~~b-~~ The~~That~~ amount paid will then be treated as though it were a benefit paid under the plan~~-F-~~ 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 are provided to assist in demonstrating the use of the COB rule:

~~[A-](1)~~ Parents Not Married, Living Together, No Court Decree. The order of benefits pursuant to Subsection R590-131-6(2)(a)~~[B-1-]~~ shall be:

~~[1-](a)~~ the parent whose birthday falls earlier in the calendar year; then

~~[2-](b)~~ the parent whose birthday falls later in the calendar year; or

~~[3-](c)~~ if the parents have the same birthday, the plan that has covered the parent longest; then

~~[4-](d)~~ the plan that has covered the parent the shortest.

~~[B-](2)~~ Parents Divorced, Separated, Or Not Living Together.

~~[1-](a)~~ The court decree gives joint custody with the father 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 Subsection R590-131-6(2)(b)(i)~~[B-2-a-]~~ shall be the:

~~[a-](i)~~ natural father;

~~[b-](ii)~~ step-mother;

~~[e-](iii)~~ natural mother; then

~~[d-](iv)~~ step-father.

~~[2-](b)~~ The court decree gives joint custody with father responsible for the child's health care expenses or health care coverage, the father does not have health care coverage, but his wife does. The order of benefits pursuant to Subsection R590-131-6(2)(b)(i)~~[B-2-a-]~~ shall be the:

~~[a-](i)~~ step-mother;

~~[b-](ii)~~ natural mother; then

~~[e-](iii)~~ step-father.

~~[3-](c)~~ The court decree gives custody to the father and requires both parents to be responsible for health care expenses or coverage. The father's date of birth (DOB) 12/01, the step-mother's DOB 02/17, the mother's DOB 08/23, and the step-father's DOB 01/10. The order of benefits pursuant to Subsection R590-131-6(2)(b)(ii)~~[B-2-b-]~~ shall be the:

~~[a-](i)~~ step-father;

~~[b-](ii)~~ step-mother;

~~[e-](iii)~~ natural mother; then

~~[d-](iv)~~ natural father.

~~[4-](d)~~ A court decree awards joint custody and the father physical custody. The court decree does not address health care expenses or coverage. The father's DOB is 12/01, the step-mother's DOB is 02/17, the mother's DOB is 08/23, and the step-father's DOB is 01/10. The order of benefits pursuant to Subsection R590-131-6(2)(b)(iii)~~[B-2-e-]~~ shall be the:

~~[a-](i)~~ step-father;

~~[b-](ii)~~ step-mother;

~~[e-](iii)~~ natural mother; then

~~[d-](iv)~~ natural-father.

~~[5-](e)~~ A court decree awards joint custody and requires both parents to be responsible for health care expenses or coverage. The child lives with the mother 51% of the year. The father's DOB is 12/01, the step-mother's DOB is 02/17, the mother's DOB is 08/23, and the step-father's DOB is 01/10. The order of benefits pursuant to Subsection R590-131-6(2)(b)(ii)~~[B-2-b-]~~ shall be the:

~~[a-](i)~~ step-father;

~~[b-](ii)~~ step-mother;

~~[e-](iii)~~ natural mother; then

~~[d-](iv)~~ natural father.

~~[C-](3)~~ Parents Never Married.

~~[1-](a)~~ The parents are not living together and no court decree exists. The order of benefits pursuant to Subsection R590-131-6(2)(b)(iv)~~[B-2-d-]~~ shall be the;

~~[a-](i)~~ custodial parent;

~~[b-](ii)~~ custodial parent's spouse;

~~[e-](iii)~~ non-custodial parent; and then

~~[d-](iv)~~ non-custodial parent's spouse.

~~[2-](b)~~ The parents are not living together and the court decree awards custody to mother, but the decree does not address health care expenses or coverage. The order of benefits pursuant to Subsection R590-131-6(2)(b)(iv)~~[B-2-d-]~~ shall be the:

~~[a-](i)~~ natural mother;

~~[b-](ii)~~ step-father;

~~[e-](iii)~~ natural father; then

~~[d-](iv)~~ step-mother.

~~[D-](4)~~ Children No Longer Minors.

~~(a)~~ A court decree orders that the natural father is to provide insurance for the minor children and custody is awarded to the natural mother. The dependents are age 18 and older. The order of benefits pursuant to Subsection R590-131-6(2)(b)(iv)~~[B-2-d-]~~ shall be the:

~~[1-](a)~~ natural mother;

~~[2-](b)~~ step-father;

~~[3-](c)~~ natural father; then

~~[4-](d)~~ step-mother.

~~(b)~~ A court decree orders that the natural father is to provide insurance for the minor child and custody is awarded to the natural mother. The dependent is age 20 and does not reside at either parent's home. The order of benefits shall be based on Subsection R590-131-6(5), Longer or Shorter Length of Coverage.

R590-131-10. Effective Date for Existing Contracts.

~~[A-]~~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~~[09]~~.

R590-131-11. Penalties.

Any insurer that fails to comply with the provisions of this rule~~[3]~~ shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.

R590-131-12. ~~[Separability]~~ Severability.

~~[If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances shall not be affected.]~~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 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.

R590-131-13. Enforcement Date.

~~The commissioner will begin enforcing the revised provisions of this rule January 1, 2009-]~~

KEY: insurance law

Date of Enactment or Last Substantive Amendment: ~~[October 2, 2008]~~**2020**

Notice of Continuation: September 29, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-~~[21-307]~~**22-619**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-237	Filing No. 52802

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-237. Access to Health Care Providers in Rural Counties
3. Purpose of the new rule or reason for the change:
The rule is being amended to update two lists in the rule, remove two definitions, update a code citation, and make clerical changes.
4. Summary of the new rule or change:
The major changes include updates to the lists of independent hospitals and federally qualified health centers in the rule, remove the definitions of "credentialed staff member" and "federally qualified health center" that are no longer necessary, and update citations to the relevant code section, which is now Chapter 31A-45, Managed Care Organizations. Other amendments include minor clerical and style changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes largely update the lists of independent hospitals and federally qualified health centers located in rural areas of Utah. These changes are known in the industry and insurers are already operating in compliance with the changes.

B) Local governments:																
There is no anticipated cost or savings to local governments. The changes largely update the lists of independent hospitals and federally qualified health centers located in rural areas of Utah. There are no compliance requirements for local governments in the rule.																
C) Small businesses ("small business" means a business employing 1-49 persons):																
There is no anticipated cost or savings to small businesses. The changes largely update the lists of independent hospitals and federally qualified health centers located in rural areas of Utah. There are no compliance requirements for small businesses in the rule.																
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 largely update the lists of independent hospitals and federally qualified health centers located in rural areas of Utah. These changes are known in the industry and insurers, which are the only non-small businesses affected, are already operating in compliance with the changes.																
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 <i>agency</i>):																
There is no anticipated cost or savings to any other persons. The changes largely update the lists of independent hospitals and federally qualified health centers located in rural areas of Utah. There are no compliance requirements for any persons in the rule.																
F) Compliance costs for affected persons:																
The changes largely update the lists of independent hospitals and federally qualified health centers located in rural areas of Utah. There are no compliance costs for any other persons.																
G) 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																
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
Fiscal Cost	FY2021	FY2022	FY2023													
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
H) Department head approval of regulatory impact analysis:			
The Commissioner of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Todd E. Kiser, Commissioner			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 31A-2-201(3)(a)	Subsection 31A-45-501-(8)(c)	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency

not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/15/2020

10. This rule change MAY become effective on:	07/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer 1	Date:	06/01/2020
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R590. Insurance, Administration.

R590-237. Access to Health Care Providers in Rural Counties.

R590-237-1. Authority.

This rule is promulgated pursuant to Subsections ~~31A-2-201(2),~~ 31A-2-201(3)(a)[;] and 31A-~~[8-501(7)]45-501(8)(c)~~ wherein the commissioner is empowered to administer and enforce Title 31A, Insurance Code, and make administrative rules to implement Section 31A-~~[8]45-501~~.

R590-237-2. Purpose.

The purpose of this rule is to

- (1) identify ~~the counties~~ each county in Utah with a population density of less than 100 people per square mile;
- (2) identify independent hospitals in Utah;
- (3) identify federally qualified health centers in Utah; and
- (4) describe how a ~~health maintenance~~ managed care organization ~~[(HMO)]~~ shall:
 - (a) use the information identifying the counties, independent hospitals, and federally qualified health centers described in (1), (2), and (3) above; ~~[and]~~
 - (b) notify the subscribers, independent hospitals, and federally qualified health centers; and
 - (c) ensure ~~[an HMO]~~ a managed care organization provides the notice required by Subsection 31A-~~[8-501(7)]45-501(8)(d)(ii)~~.

R590-237-3. Applicability and Scope.

This rule applies to a ~~[l]icensed health maintenance~~ managed care organization[s] as defined in Subsection 31A-~~[8-401(8)]45-102(2)~~.

R590-237-4. Definitions.

In addition to the definitions in Sections 31A-1-301, ~~[and]~~ 31A-8-101, and 31A-45-102, the following definitions apply ~~[to]~~ for the purposes of this rule:

(1) "Board of ~~[D]directors[;]" [for the purpose of this rule,~~]means the local board of directors for the independent hospital that is directly responsible for the daily policy and financial decisions. A board

NOTICES OF PROPOSED RULES

of directors does not include a corporate board of directors for the entity that owns the independent hospital.

(2) ~~["Credentialed staff member" means a health care provider with active staff privileges at an independent hospital or a federally qualified health center. A credentialed staff member is not required to be an employee of the independent hospital or federally qualified health center.~~

~~(3) "Federally Qualified Health Center," as defined in the Social Security Act 42 U.S.C., Sec. 1395x, means an entity which:~~

~~(a)(i) is receiving a grant under Section 330, other than Subsection (h) of the Public Health Service Act 42 U.S.C., 254b; or~~

~~(ii)(A) is receiving funding from a grant under a contract with the recipient of such a grant; and~~

~~(B) meets the requirements to receive a grant under Section 330, other than Subsection (h) of the Public Health Service Act 42 U.S.C. 254b;~~

~~(b) based on the recommendation of the Health Resources and Services Administration within the Public Health Service is determined by the Secretary of Health and Human Services to meet the requirements for receiving such a grant;~~

~~(c) was treated by the Secretary of Health and Human Services as a comprehensive Federally funded health center as of January 1, 1990; or~~

~~(d) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act, 25 U.S.C. 450f, or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act, 25 U.S.C. 1651.~~

~~(4) "Local practice location" means the provider's office where services are rendered, [which is:]~~

~~(a) The local practice location is permanently located within a county with a population density of:~~

~~(i) less than 100 people per square mile prior to December 31, 2000; or~~

~~(ii) less than 30 people per square mile. [; and]~~

~~(b) The local practice location is within 30 miles of paved roads of:~~

~~(i) the place where the enrollee lives or resides; or~~

~~(ii) the location of the independent hospital or federally qualified health center at which the enrollee may receive covered benefits pursuant to Subsections 31A-[8]45-501(2) or 31A-45-501(3).~~

~~(5) "Policy and financial decisions" means the day-to-day decisions made by the local [B]board of directors with regard to an independent hospital's policy and financial solvency.~~

~~(6) "Provider" means a [ny] person who:~~

~~(a) furnishes health care directly to the enrollee; and~~

~~(b) is licensed or otherwise authorized to furnish the health care in [this state]Utah.~~

~~(7) "Referral" means:~~

~~(a) the request by a health care provider for an item, service, test, or procedure to be performed by another health care provider;~~

~~(b) the request by a physician for a consultation with another physician; or~~

~~(c) the request or establishment of a plan of care by a physician.~~

~~(8) "Rural [C]county" means a county [as described in Subsection 31A-8-501(2)(b)]with a population density of less than 100 people per square mile.~~

R590-237-5. Rural Counties.

(1) For the purposes of Subsection 31A-45-501(8)(c)(ii)(A), the counties with a population density of less than 100 people per square mile are each county in Utah except Cache, Davis, Salt Lake, Utah, and

Weber, as reported by the Utah Office of Vital Statistics, updated February 11, 2019, located at <https://opendata.utah.gov/Government-and-Taxes/Population-Density-By-Land-Area-And-County-In-Utah/bzur-buif>.

(2) For the purposes of Subsection 31A-[8]45-501(2)(b), rural counties where an independent hospital[s] was built prior to December 31, 2000 include [all Utah counties]-each county in Utah except Davis, Salt Lake, Utah, and Weber.

(2) For the purposes of Subsection 31A-[8]45-501(2)(b), rural counties where an independent hospital[s] was built after December 31, 2000 include [all Utah counties]-each county in Utah except Cache, Davis, Salt Lake[,], Utah, Washington, and Weber.

(3) For the purposes of Subsection 31A-[8]45-501([5]6)(b)(i), non-contracting provider referrals to non-contracting providers are allowed in [all counties]-each county in Utah except[-] Cache, Davis, Salt Lake, Utah, Washington, and Weber[-counties].

R590-237-6. Independent Hospitals.

[F]or the purposes of 31A-45-501(8)(c)(ii)(B) each of the following [are the-]is considered an independent hospital[s that fall under S] for the purposes of Subsections 31A-[8]45-501(1)(c) and 31A-45-501(2)(b):

(1) [Allen Memorial Hospital, Moab, Grand County, Utah

(2)-]Ashley [Valley]Regional Medical Center, Vernal, Uintah County, Utah;

(3) Beaver Valley Hospital, Beaver, Beaver County, Utah;

(4) [Brigham City Community Hospital, Brigham City, Box Elder]Blue Mountain Hospital, Blanding, San Juan County, Utah;

(5) [Cache Specialty Hospital, Logan, Cache County, Utah (Subject to the provisions of Subsection 31A-8-501(2))-]Castleview Hospital, Price, Carbon County, Utah;

(6) Central Valley Medical Center, Nephi, Juab County, Utah;

(7) [Garfield Memorial Hospital, Panguitch, Utah

(8)-]Gunnison Valley Hospital, Gunnison, Sanpete County, Utah;

(9) Kane County Hospital, Kanab, Kane County, Utah;

(10) Milford Valley Memorial Hospital, Milford, Beaver County, Utah;

(11) [Mountain West Medical Center, Tropic, Tropic]Moab Regional Hospital, Moab, Grand County, Utah;

(12) San Juan Hospital, Monticello, San Juan County, Utah; and

(13) Uintah Basin Medical Center, Roosevelt, Duchesne County, Utah.

R590-237-7. Federally Qualified Health Centers.

[F]or the purposes of Subsection 31A-45-501(8)(c)(ii)(C) each of the following [are the-]is considered a federally qualified health center[s that fall under S] for the purposes of Subsection 31A-[8]45-501(3)(b):

(1) [Beaver Medical Clinic, Beaver, Beaver]-]Bear Lake Community Health Center, Garden City, Rich County, Utah;

(2) Bear River Health Clinic, Tremonton, Box Elder County, Utah;

(3) Blanding Family Chiropractic, Blanding, San Juan County, Utah;

(4) Blanding Family Practice Community Health Center, Blanding, San Juan County, Utah;

(5) Blanding Family [Practice/Blanding Medical]Vision Center, Blanding, San Juan County, Utah;

~~(3)(6) Bryce Valley Clinic, Cannonville, Box Elder Community Health Center, Brigham City, Box Elder County, Utah;~~
~~(7) Brigham City Community Health Center, Brigham City, Box Elder County, Utah;~~

~~(4)(8) Carbon Medical Service[s] Association -- Helper Clinic, [Carbon]Helper, Carbon County, Utah;~~

~~(5)(9) [Cireleview Clinic, Cireleview, Piute]Carbon Medical Service Association, Sunnyside, Carbon County, Utah;~~

~~(6)(10) [Duchesne Valley Medical Clinic, Duchesne, Duchesne County, Utah~~

~~(7) Emery Medical Center, Castledale, Emery County, Utah~~

~~(8) Enterprise Valley Medical Clinic, Enterprise, Washington County, Utah~~

~~(9) Garfield Memorial Clinic, Panguitch, Garfield County, Utah~~

~~(10) Cedar Community Health Center, Cedar City, Iron County, Utah;~~

~~(11) Family Healthcare, Cedar City, Iron County, Utah;~~

~~(12) Green [Valley/River [Clinic]Medical Center, Green River, Emery/[Grand Counties] County, Utah;~~

~~(13)(1) [Halechita Clinic, San Juan County, Utah~~

~~(12) Hurricane Family Practice Clinic, Hurricane, Washington County, Utah~~

~~(13) Kamas Health Center, Kamas, Summit County, Utah~~

~~(14) Kazan Memorial Clinic, Escalante, Garfield County, Utah~~

~~(15) Long Valley Medical, Kane County, Utah~~

~~(16) Milford Valley Clinic, Milford, Beaver County, Utah~~

~~(17) Kanosh Community Health Center, Kanosh, Millard County, Utah;~~

~~(14) Kazan Memorial Clinic, Escalante, Garfield County, Utah;~~

~~(15) Koosharem Community Health Center, Richfield, Sevier County, Utah;~~

~~(16) Montezuma Creek Community Health Center, Montezuma Creek, San Juan County, Utah;~~

~~(17)(8) [Monument Valley Health Center, Monument Valley, Utah~~

~~(19) Navajo Mountain Health Center, San Juan County, Utah~~

~~(20) Wayne County Medical Clinic, Bicknell, Wayne County, Utah]Mountainlands Community Health Center, Vernal, Uintah County, Utah;~~

~~(18) Southwest WCHC Mental Health, Panguitch, Garfield County, Utah;~~

~~(19) Wayne Community Health Center, Hanksville, Wayne County, Utah; and~~

~~(20) Wayne Community Health Center, Bicknell, Wayne County, Utah.~~

R590-237-8. Rural Health Notification.

(1) A ~~[n HMO] managed care organization~~ shall provide ~~[its] to a subscriber[s with]~~ the notice required by Subsection 31A-~~[8]45-501(7)8(d)(ii)~~ no later than at the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon request thereafter. The~~[is]~~ information must be included and easily accessible on the ~~[HMO] managed care organization's~~ website. When a rural county~~[ies]~~, independent hospital~~[s]~~, or federally qualified health center~~[s]~~ changes, the ~~[HMO] managed care organization~~ shall provide an updated notice to ~~[its] each~~ affected subscriber~~[s]~~ within 30 days.

(2) A ~~[n HMO] managed care organization~~ shall provide to ~~[the] each~~ independent hospital~~[s]~~ and federally qualified health center~~[s]~~ in the ~~[HMO] managed care organization's~~ service area the

notice required by Subsection 31A-~~[8]45-501(7)8(d)(ii)~~ within 30 days.

R590-237-9. Penalties.

A ~~[n HMO] managed care organization~~ found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-237-10. [Enforcement Date.

~~_____ The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.~~

R590-237-11. Severability.

~~[If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.] If any provision of this rule, R590-237, 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 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: health care providers

Date of Enactment or Last Substantive Amendment: ~~[September 7, 2006]2020~~

Notice of Continuation: August 31, 2016

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-~~[8]45-501~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R649-1	Filing No. 52804

Agency Information

1. Department:	Natural Resources	
Agency:	Oil, Gas and Mining; Oil and Gas	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT	
Mailing address:	1594 W North Temple, Suite 1210	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Natasha Ballif	801-538-5328	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:
The purpose of the rule change is to establish definitions of terms utilized with the Title R649 Oil and Gas Program rules. The rule change will amend four definitions.
4. Summary of the new rule or change:
Rule R649-1 establishes definitions for terms used within the Rule R649-1. The change amends the definitions for "application for permit to drill, deepen or plug back," "operator," "operatorship," and "preparation for drilling."

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Oil and Gas program, as well as the Board of Oil, Gas and Mining (Board), are expecting both an on-going savings in staff time through a reduction in operatorship hearings, as well as an upfront cost for software modifications to enhance the program's website to adhere to the proposed rule amendments. The website modifications are estimated at \$15,000, however, a total savings from operatorship hearings cannot be estimated as there is no way of knowing the number of hearings being reduced by this rule amendment.
B) Local governments:
No costs or savings to local governments are anticipated, since this rule impacts oil and gas companies, the Division of Oil and Gas (Division), and the Board.
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 . It is anticipated that this rule amendment will have a neutral fiscal impact to businesses as some will see a reduction in operatorship hearings, which would result in less attorney fees, travel, etc., while those who object to operatorship designations will need to appear before the Board. However, a total fiscal impact cannot be estimated as there is no way of knowing how many businesses will be affected by the rule amendment and how many will object to the designations.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are four non-small businesses in the oil and gas industry (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . It is anticipated that this rule amendment will have a neutral fiscal impact to businesses as some will see a reduction in operatorship hearings, which would result in less attorney fees, travel, etc., while those who object to operatorship designations will need to appear before the Board. However, a total fiscal impact cannot be estimated as there

is no way of knowing how many businesses will be affected by the rule amendment and how many will object to the designations.

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, businesses, or local government entities.

F) Compliance costs for affected persons:

There will be no compliance costs for oil and gas operators.

G) 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	FY2021	FY2022	FY2023
State Government	\$15,000	\$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	\$15,000	\$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	-\$15,000	\$0	\$0

H) 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.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division anticipates a fiscally neutral impact to both state government and businesses over the long run. In the short term, the Division anticipates one-time costs to upgrade the Oil and Gas program's website. The Division anticipates that these costs will be offset over time by a reduction in staff time spent on hearings regarding operatorship.

B) Name and title of department head commenting on the fiscal impacts:

Brian Steed; Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 40-6-1 et seq.		
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	Date:	06/01/2020
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R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-1. Oil and Gas Definitions.

R649-1-1. Definitions.

"Authorized Agent" means a representative of the director as authorized by the board.

"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.

"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.

"Artificial Liner" means a pit liner made of material other than clay or other in-situ material and that meets the requirements of Section R649-9-3, Permitting of Disposal Pits.

"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 [but is not limited to,] 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 [for the purpose of] to dump [ing] and dilute [ion of] 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.

NOTICES OF PROPOSED RULES

"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 ~~all~~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 (H₂S), carbon dioxide (CO₂), 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 eighty (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, 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.

"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 Section 40-6-2(11) 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 Section 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 Section 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.

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" shall not include gaseous or liquid substances derived from coal, oil shale, tar sands or other hydrocarbons classified as synthetic fuel.

"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 ~~or Designated Agent~~" 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 ~~he~~they produce[s], either for ~~himself or for himself~~themselves and others.

"Person" means and includes any natural person, bodies politic and corporate, partnerships, associations and companies.

"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.

"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 ~~and~~ 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~~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.

"Seismic Operator" means a person who conducts seismic exploration for oil or gas, whether for ~~himself~~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.

NOTICES OF PROPOSED RULES

"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 shall not be a drilling unit as provided for in [U.C.A.]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 shall 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.

"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 shall 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 Enactment or Last Substantive Amendment: ~~June 1,~~ 2020

Notice of Continuation: August 26, 2016

Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R649-2	Filing No. 52805	

Agency Information

1. Department:	Natural Resources		
Agency:	Oil, Gas and Mining; Oil and Gas		
Building:	Department of Natural Resources		
Street address:	1594 W North Temple		
City, state:	Salt Lake City, UT		
Mailing address:	1594 W North Temple, Suite 1210		
City, state, zip:	Salt Lake City, UT 84114		
Contact person(s):			
Name:	Phone:	Email:	
Natasha Ballif	801-538-5328	natashaballif@utah.gov	

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

General Information

2. Rule or section catchline:
R649-2. General Rules
3. Purpose of the new rule or reason for the change:
The purpose of the amendment is to establish designation of an operator of a drilling unit for oil and gas operations.
4. Summary of the new rule or change:
Rule R649-2 establishes requirements for the permitting, reporting, and inspecting of oil and gas drilling operations in Utah. The rule changes include changing the designation of an operator of a drilling unit for oil and gas operations.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Oil and Gas program, as well as the Board of Oil, Gas and Mining (Board), are expecting both an on-going savings in staff time through a reduction in operatorship hearings, as well as an upfront cost for software modifications to enhance the program's website to adhere to the proposed rule amendments. The website modifications are estimated at \$15,000, however, a total savings from operatorship hearings cannot be estimated as there is no way of knowing the number of hearings being reduced by this rule amendment.

B) Local governments:			
No cost or savings to local governments are anticipated, since this rule impacts oil and gas companies, the Division of Oil and Gas (Division), and the Board.			
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 . It is anticipated that this rule amendment will have a neutral fiscal impact to businesses as some will see a reduction in operatorship hearings, which would result in less attorney fees, travel, etc., while those who object to operatorship designations will need to appear before the Board. However, a total fiscal impact cannot be estimated as there is no way of knowing how many businesses will be affected by the rule amendment and how many will object to the designations.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There are four non-small businesses in the oil and gas industry (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . It is anticipated that this rule amendment will have a neutral fiscal impact to businesses as some will see a reduction in operatorship hearings, which would result in less attorney fees, travel, etc., while those who object to operatorship designations will need to appear before the Board. However, a total fiscal impact cannot be estimated as there is no way of knowing how many businesses will be affected by the rule amendment and how many will object to the designations.			
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, businesses, or local government entities.			
F) Compliance costs for affected persons:			
There will be no compliance costs for oil and gas operators.			
G) 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	FY2021	FY2022	FY2023
State Government	\$15,000	\$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	\$15,000	\$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	-\$15,000	\$0	\$0

H) 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.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division anticipates a fiscally neutral impact to both state government and businesses over the long run. In the short term, the Division anticipates one-time costs to upgrade the Oil and Gas program's website. The Division anticipates that these costs will be offset over time by a reduction in staff time spent on hearings regarding operatorship.

B) Name and title of department head commenting on the fiscal impacts:

Brian Steed; Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 40-6-1 et seq.		
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	Date:	06/01/2020
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R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-2. General Rules.

R649-2-1. Scope of Rules.

1. The following general rules adopted by the board pursuant to Title 40, Chapter 6, Board of Division of Oil, Gas and Mining [~~Chapter 6 of Title 40~~] shall apply to ~~all~~ any land[s] in the state in order to conserve the natural resources of oil and gas in the state, to protect human health and the environment, to prevent waste, to protect the correlative rights of ~~all~~ each owner[s] and to realize the greatest ultimate recovery of oil and gas.

2. Special rules and orders have been and will be issued by the board when required and shall prevail as against the general rules and orders of the board if in conflict.

3. Exceptions to the general rules may be granted by the director or authorized agent for good cause shown and shall prevail as against the general rules.

4. No exceptions granted by the board, director, or authorized agent to the rules applicable to the Underground Injection Control Program will be effective without the consent of the federal Environmental Protection Agency.

R649-2-2. Application of Rules to Lands Owned or Controlled By the United States.

These general rules shall apply to ~~all~~ any land[s] in the state including lands of the United States and lands subject to the jurisdiction of the United States to the extent lawfully subject to the state's power.

R649-2-3. Application of Rules to Unit Agreements.

1. The board may suspend the application of the general rules or orders or any part thereof, with regard to any unit agreement approved

by an authorized officer of the appropriate federal agency, so long as the conservation of oil or gas and the prevention of waste is accomplished.

2. Such suspension shall not relieve any operator from making such reports as are otherwise required by the general rules or orders, or as may reasonably be requested by the board or the division in order to keep the board and the division fully informed as to operations under such unit agreements.

R649-2-4. Designation of ~~Agent or~~ Operator.

~~[1. A designation of agent or operator shall be submitted to the division prior to the commencement of operations.~~

~~2. A designation of agent or operator will, for purposes of the general rules and orders, be accepted as evidence of authority of agent to fulfill the obligations of the owner, to sign any required documents or reports on behalf of the owner, and to receive all authorized orders or notices given by the board or the division.~~

~~3. All changes of address and any termination of the designated agent's or operator's authority shall be promptly reported in writing to the division, and in the latter case a designation of a new agent or operator shall be promptly made.]1. Subject to the provision of Subsections R649-2-4(3) and (4), the designated operator of a drilling unit for oil and gas operations shall be the owner which, in the applicable drilling unit:~~

~~1.1. owns more than an undivided 50% of the working interest;~~

~~1.2. owns 50% or less of the working interest, and has the written authorization and designation by additional owners to operate on their behalf which, combined with the designated operator's interest, totals more than an undivided 50% of the working interest; or~~

~~1.3. is the designated owner selected by the consenting parties to a JOA if: (a) a JOA has been entered by owners owning more than an undivided 50% of the working interest; (b) the operator designated under the JOA has elected to go non-consent to the proposed operation, and (c) the terms of the JOA allow the designation.~~

~~2. Subject to the provision of Subsections R649-2-4(3) and (4) below, in the absence of a board order establishing a drilling unit for oil and gas operations, the designated operator of a well shall be the owner that:~~

~~2.1. owns more than the aggregate of the undivided 50% of: (a) the working interest in the lease covering the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (b) the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which the well will produce; or~~

~~2.2. owns the aggregate of the undivided 50% or less of: (a) the working interest in the lease covering the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (b) the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (c) has the written authorization and designation by additional owners to operate on their behalf which, combined with the designated operator's interest totals more than the aggregate of an undivided 50%:~~

~~2.2.1. the working interest attributable to the lease covering the lands which the well will physically penetrate and in the targeted formations from which it will produce; and~~

~~2.2.2. the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which it will produce; or~~

~~2.3. the designated owner selected by consenting parties to a JOA if: (a) a JOA has been entered by owners owning more than the aggregate of an undivided 50% of: (i) the working interest in the lease~~

covering the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (ii) the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which the well will produce; (b) the operator designated under the JOA has elected to go non-consent to an operation; and (c) the terms of the JOA allow the designation.

3. If the criteria set forth in Subsection R649-2-4(1) or (2) cannot be met, or if any owner desires to challenge whether any of the required criteria have been satisfied, or if any owner desires to challenge the designation of the operator on any other good faith basis, including those specified in Subsection R649-3-4(4), the owner may file a request for agency action seeking board review and designation of a different operator provided that no challenge may be asserted after the protest period specified in Subsection R649-3-4(4) has elapsed and, if the division has determined that good cause exists for shortening the ten day period under Subsection R649-3-4(4), preparation for drilling has commenced.

3.1. The board may elect to consider the provisions of the applicable JOA regarding change of operatorship in determining which owner shall be the operator rather than designating an operator under this rule.

3.2. The board may elect to take the designation of an operator under advisement or continue the request until additional information is provided to the board.

4. If a request for agency action is filed as provided in Subsection R649-2-4(3), and after opportunity for a hearing, the board may consider any of the following factors in its deliberations and ruling:

4.1. experience, prudence and competence as an operator in other similarly situated wells;

4.2. multi-well expenditures already made for infrastructure that involve the applicable well or drilling unit;

4.3. good faith negotiations prior to the board's consideration of the operator designation;

4.4. whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether an owner has committed to drill a well in a timely fashion;

4.5. project complexity and geology;

4.6. contractual obligations including those arising under a drilling contract, surface use agreement, or an expiring lease; and

4.7. any other factors the board may deem material to its decision.

5. Subject to Subsection R649-2-4(5.3) the designated operator has the right to request the division revoke any other approved APDs for any wells where preparation for drilling has not yet commenced relating to:

5.1. the applicable drilling unit; or

5.2. in the absence of a board order establishing a drilling unit, any approved APDs for any wells approved under the criteria specified in R649-2-4(2) above.

5.3. The division may not revoke APDs approved pursuant to Subsection R649-3-4(5).

R649-2-5. Right to Inspect.

1. The director or authorized agent shall have the right at [aH]any reasonable time[s] to go upon and inspect any oil or gas properties and wells for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of the statutes, the general rules and orders of the board or any special field rules and orders. The director or authorized agent shall report any observed violation to the board.

2. The documentation of off lease transportation of crude oil required by Section R649-2-6, Access to Records, shall be carried in the motor vehicle during transportation and shall be available for examination and inspection by the director or an authorized agent upon request.

R649-2-6. Access to Records.

1. Any person who produces, operates, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or who injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or disposal of salt water or oil field waste within the state, shall make and keep appropriate books and records covering [his]their operations in the state from which [he]they shall be able to make and substantiate [aH]any reports required by the board or the division.

1.1. Such books and records, together with copies of [aH]any reports and notices submitted to the board or the division shall be kept on file and available for inspection by the director or an authorized agent at [aH]any reasonable time[s] for a period of at least six years.

1.2. The director or the authorized agent shall also have access to [aH]any pertinent well records wherever located.

2. Each owner or operator shall permit the director or authorized agent at [his]their sole risk and expense, in the absence of negligence on the part of the owner or operator, to come upon any lease, property or well operated or controlled by [him]them; to inspect the records pertaining to and the manner of operation of such property or well; and to have access at [aH]any reasonable time[s] to any[~~and all~~] record[s] pertaining to such well. [A]Any information so obtained by the director or authorized agent shall be kept confidential and shall be reported only to the division or its authorized agent, unless the owner or operator gives written permission to the director to release such information.

3. [A]Any off lease transportation of oil by motor vehicle shall be accompanied by a run ticket or equivalent document. The documentation shall identify the name and address of the transporter, the name of the operator, the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the calculated percentage of BS and W, the volume of oil or the opening and closing tank gauges or meter readings, and the destination of the oil.

R649-2-7. Naming of Oil and Gas Fields or Pools.

1. The division shall name oil and gas fields or pools within the state in cooperation with a Fields Names Advisory Committee and with due regard and consideration for any recommendation from the owners or operators of such fields or pools. The Field Names Advisory Committee shall be composed of a representative of the United States Bureau of Land Management and representatives of appropriate state agencies and the oil and gas industry.

R649-2-8. Measurement of Production.

1. The volume of oil production shall be computed in barrels of clean oil, on the basis of acceptable meter measurements, tank measurements, or with such greater accuracy as may be required by the division. Computations of the volume of oil production shall be subject to the following corrections:

1.1. The gross volume of oil shall be corrected to exclude the entire volume of impurities not constituting a natural component part of the oil.

1.2. The observed volume of oil after correction for impurities shall be further corrected to the standard volume at 60 degrees Fahrenheit, in accordance with Table 6A of the API/ASTM D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), which is incorporated by this reference.

1.3. The observed gravity of oil shall be corrected to the standard API gravity at 60 degrees Fahrenheit in accordance with Table 5A of API/ASTM, D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), which is incorporated by this reference.

2. ~~Any~~ gas shall be measured by an orifice type meter unless otherwise authorized by the division.

2.1. In computing the volumes of ~~any~~ gas produced, sold, or injected, the standard pressure base shall be 14.73 pounds per square inch absolute (psia), and the standard temperature base shall be 60 degrees Fahrenheit.

2.2. ~~Any~~ measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized by the division.

R649-2-8a. Consenting to Participate in a Well.

1. Except as provided in Subsection (2), an owner shall be determined by the board to be a "Nonconsenting owner" as defined in ~~Utah Code~~Section 40-6-2 if, within 30 days from the date the notice of opportunity to participate is received, the owner has failed to:

1.1. Execute and deliver to the operator an executed AFE for the well; and

1.2. Execute and deliver to the operator a JOA to govern the drilling and operation of the well and applicable drilling unit with the operator, and subject the owner to the risk compensation award under Section 40-6-6.5 as may be determined by the board.

2. If, within 30 days from the date the notice of opportunity to participate is received or such later date as provided for by the notice of opportunity to participate, or by separate written agreement, an owner has delivered to the operator an executed AFE, and subject to Subsection ~~R649-2-8a(5)~~~~below~~, written objections, addressing the specific provisions of the operator's proposed JOA to which the owner in good faith objects, the reasoning for each objection, and modifications or alternative provisions the owner proposes in lieu thereof, the owner shall be deemed a "Consenting owner" as defined in ~~Utah Code~~Subsection 40-6-2(4).

3. Failure of an owner to comply with the requirements of Subsection (2) shall result in the determination by the board that the owner is a Nonconsenting owner and subject the owner to the risk compensation award under Section 40-6-6.5 as may be determined by the board.

4. An owner who complies with the requirements of Subsection (2) or an operator who in good faith rejects said owner's proposed modifications or alternate provisions to the JOA may request that the board determine the terms of the JOA in accordance with the provisions of Subsection 40-6-6.5(2) as follows:

4.1. if the operator has filed a request for agency action for compulsory pooling of owners in the well and associated drilling unit has been filed, either the owner or the operator may move the board to determine the reasonableness of the costs charged and the terms of the JOA between the owner and operator as part of the proceeding~~;~~ and

4.2. if no request for agency action has been filed for the compulsory pooling of owners in the well and associated drilling unit, then either the owner or the operator may file a request for agency action within 60 days of the receipt by the operator of the owner's written objections~~;~~

4.3. if neither Subsection (4.1) or (4.2) timely occurs, then the actual costs incurred shall be deemed by the board as just and reasonable, and the terms of the JOA as proposed by the operator in the notice of opportunity to participate shall be deemed by the board to govern as between the operator and the owner in any subsequent hearing before the board~~;~~

4.4. if a hearing is held before the board regarding disputed provisions or terms of a JOA, the scope of the hearing shall be limited to addressing only the terms at issue within the proposed JOA. Any JOA approved and adopted by the board shall include ~~any~~ undisputed terms and conditions of the JOA proposed by the operator and govern as between the operator and the owner. If the board determines the owner's objections to the costs charged are justified, the operator shall apply the amounts over and above those found to be reasonable charges as credit against the owner's proportionate share of future operational expenses.

5. Articles VII.A through D of the standard and unmodified A.A.P.L. Form 610-2015 Model Form Operating Agreement, which are incorporated by this reference, are deemed just and reasonable under ~~any~~ circumstances, and shall be adopted by the board in any JOA dispute under Subsection ~~R649-2-8a(4)~~~~above~~ retroactively effective to the date the AFE is signed by the consenting owner pursuant to Subsection ~~R649-2-8a(2)~~ above; provided that, as to Article VII. D.3, the applicable "risk penalty" referred to therein shall be set by the board. If these provisions are contained in the JOA proposed by the operator without modification, any objection to them shall be summarily rejected by the board.

R649-2-9. Refusal to Agree.

If the operator and owner negotiating in good faith fail to reach agreement for the leasing of that owner's mineral interest or for voluntary participation by that owner in the proposed well prior to the filing of a request for agency action for compulsory pooling of interests in the drilling unit under Section 40-6-6.5 then, the duly-noticed hearing on the request for agency action for compulsory pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for continued good faith negotiations between the operator and the owner.

R649-2-9a. Notice of Unlocatable and Unidentified Owners.

1. Either an owner who is not identifiable, but may claim ownership by, through, or under the estate of a deceased owner of record, or an owner who is not locatable, may be determined by the board to be a "Nonconsenting owner" as defined under Section 40-6-2 if:

1.1. the operator, concurrent with the filing of a request for agency action for compulsory pooling, files with the board an ex parte motion for notice by publication in a newspaper of general circulation in the county where the well is located for two ~~(2)~~ consecutive weeks prior to the hearing date, which motion shall be accompanied by a proposed form of such notice to be published, and an affidavit outlining in sufficient detail the operator's reasonable diligent and good faith efforts to identify and locate such owners including at a minimum:

1.1.1. a listing of ~~any~~ such owners; provided, if such owners are unknown, then identifying them as parties not already leased or participating in the well at issue and claiming by, through or under the estate of the deceased owner of record;

1.1.2. the name, address, email address and telephone number of a contact person for the operator to respond to the notice; and

1.1.3. ~~all of the~~ ~~any~~ information set forth in notice of opportunity to participate, in lieu of an AFE and a JOA, a statement that an AFE for the subject well and a proposed JOA agreement shall be provided by the operator to the owner if a response to the notice is received before the hearing~~;~~

1.2. the board finds the operator has exercised such reasonable, diligent and good faith efforts to identify and locate such owners and further finds the proposed form of notice is acceptable, and

issues an order granting the motion, and proof of such publication is supplied by said newspaper publisher and filed with the board;[~~5~~] and

1.3. no response, either agreeing to lease or to otherwise participate in the subject well, is received by the operator from any such owner prior to the hearing.

R649-2-9b. Imposition of Statutory Risk Compensation Award.

In determining the level of any risk compensation award imposed within the range of 150% to 400% specified under Subsection 40-6-6.5(4)(d)(i)(D), the board may consider, among other factors, the geologic and engineering uncertainties and difficulties in drilling the well, the availability of information from prior and current drilling and development in the area, and the unique specified costs of the well.

R649-2-10. Notification of Lease Sale or Transfer.

The owner of a lease shall provide notification to any person with an interest in such lease, when [~~all~~ any] part of that interest in the lease is sold or transferred.

R649-2-11. Confidentiality of Well Log Information.

1. Well logs marked confidential shall be kept confidential for one year after the date on which the log is required to be filed with the division, unless the operator gives written permission to release the log at an earlier date.

2. Information on a newly permitted well will be held confidential only upon receipt by the division of a written request from the owner or operator.

3. The period of confidentiality may begin at the time the APD is submitted for approval if a request for confidentiality is received at that time. The information on the application itself will not be considered confidential.

4. Information that shall be held confidential includes well logs, electrical or radioactivity logs, electromagnetic, electrical, or magnetic surveys, core descriptions and analysis, maps, other geological, geophysical, and engineering information, and well completion reports that contain such information.

5. The owner or operator shall clearly mark documents as confidential. Such marking shall be in red and be clearly visible.

6. Confidential wells or information shall be reported separately from wells or information that is not in confidential status.

R649-2-12. Tests and Surveys.

1. When deemed necessary or advisable the Director or authorized agent can require that tests or surveys be made to determine the presence of waste of oil, gas, water, or reservoir energy; the quantity of oil, gas or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; or any other test or survey deemed necessary to carry out the purposes of the Oil and Gas Conservation Act.

2. Directional, deviation, or measurements-while-drilling (MWD) surveys or a combination of these surveys must be run on horizontal wells in order to identify the well's path and submitted in accordance with Section R649-3-21, Well Completion and Filing of Well Logs, as amended for horizontal wells.

R649-2-13. Application of a Compulsory Pooling Order to Subsequently Drilled Wells in a Drilling Unit.

1. An initial board order compulsory pooling [~~all~~ any] interests in a drilling unit, including the terms and conditions of a JOA as adopted by the board, shall apply to any subsequently drilled well in the drilling unit as authorized under Subsection 40-6-6.5(12), subject to compliance with the following:

1.1. The operator has filed with the board a motion to modify the initial order to apply its terms to an additional well in the drilling unit which sets forth by affidavit:

1.1.1. The docket and cause numbers of said initial board order;

1.1.2. The location, identification, and description of the well drilled to which the order is to apply;

1.1.3. An identification of those owners who the operator asserts have no consented to participate in the subsequent well after having been provided a notice of an opportunity to participate and failing to consent or make objections as allowed by [~~Subs~~ Section] R649-2-8a, and those owners who are either locatable, unlocatable, or cannot be identified; [~~and~~]

1.1.4. Certification that the operator has made reasonable efforts to locate and provide notice to the alleged Nonconsenting owner which shall include:

1.1.4.1. Copies of the written notice of opportunity to participate sent to them together with a proof of service; or

1.1.4.2. Proof of notice by publication as required by Subsection R649-2-9a(1.2) if any such alleged Nonconsenting owner is unlocatable or not identified; and

1.1.5. A statement that the average weighted landowner's royalty for the drilling unit remains the same as that provided for in the initial board order or a calculation of the average weighted landowner's royalty for the drilling unit at the time of commencement of the drilling of the subsequent well as provided in Subsection 40-6-6.5(6);

1.1.6. The anticipated costs of plugging the well; and

1.1.7. The risk compensation award as determined by the board in the original order; and

1.2. The motion to modify the initial board order has been mailed by the operator, together with copies of the initial board order and a recitation of the provisions of Subsection 40-6-6.5(12) and Subsection R649-2-8a to [~~all~~ any] such alleged nonconsenting owners, with a certification of service evidencing the same executed and filed with the board; and

1.3. Within 30 days of the mailing of the motion, no party has filed any objection to the motion to modify the initial board order to apply to the subsequently drilled well in the drilling unit, including, without limitation, any objection to said party's alleged nonconsent status, the applicable risk compensation percentage or the reasonableness of the actual costs incurred for the subsequently drilled well.

2. Upon a written notice filed with the board stating the foregoing conditions have been satisfied, the board may enter an order declaring its initial compulsory pooling order to be applicable to such subsequently drilled well, with modifications for the matters addressed in the motion to modify the order.

3. If an owner or other person with an interest affected by the motion shall have filed an objection within 30 days of the mailing of the motion to modify the order including, but not limited to, an objection to said person's alleged nonconsent status, the applicable risk compensation percentage, or the reasonableness of the costs of the well, then the board shall set a time for a hearing in accordance with Rules of Practice Before the Board in [~~Section~~ Rule] R641-100 [~~et seq~~].

3.1. The hearing shall be limited to addressing the objections to the motion to modify the order as asserted by any party.

3.2. The operator shall have the burden to satisfy the requirements under Section 40-6-6.5 for the granting of the motion and the objecting owner shall have the burden of establishing the merit to its objections.

3.3. The board shall enter an order determining the application of the initial order to the subsequent well as to any party who

NOTICES OF PROPOSED RULES

filed objections, and how the initial order will apply to others who have not objected.

4. If there are no objections made to the motion to modify the initial compulsory pooling order, the initial order shall apply to the subsequent well as requested.

5. The terms of any JOA adopted by the board in an initial compulsory pooling order and applicable to any subsequent order may not be in the contravention of the provisions under Section 40-6-6.5, including providing that an owner shall be entitled to receive notice of opportunity to participate in any subsequent well proposed in the drilling unit regardless of the owner's prior consent or nonconsent status on a prior well in the drilling unit.

KEY: consenting, nonconsenting, oil, pooling
Date of Enactment or Last Substantive Amendment: [June 1,] 2020
Notice of Continuation: August 26, 2016
Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R649-3	Filing No. 52806

Agency Information

1. Department:	Natural Resources	
Agency:	Oil, Gas and Mining; Oil and Gas	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT	
Mailing address:	1594 W North Temple, Suite 1210	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R649-3. Drilling and Operating Practices
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to establish designation of an operator of a drilling unit for oil and gas operations.
4. Summary of the new rule or change:
Rule R649-3 establishes requirements for the drilling and operating practices for oil and gas operations in Utah. The rule changes include amending the permitting of wells to be drilling, deepened, or plugged-back, and adds conflicting operations over overlapping drilling units.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Oil and Gas program, as well as the Board of Oil, Gas and Mining (Board), are expecting both an on-going savings in staff time through a reduction in operatorship hearings, as well as an upfront cost for software modifications to enhance the program's website to adhere to the proposed rule amendments. The website modifications are estimated at \$15,000, however, a total savings from operatorship hearings cannot be estimated as there is no way of knowing the number of hearings being reduced by this rule amendment.
B) Local governments:
No cost or savings to local governments are anticipated, since this rule impacts oil and gas companies, the Division of Oil and Gas (Division), and the Board.
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 . It is anticipated that this rule amendment will have a neutral fiscal impact to businesses as some will see a reduction in operatorship hearings, which would result in less attorney fees, travel, etc., while those who object to operatorship designations will need to appear before the Board. However, a total fiscal impact cannot be estimated as there is no way of knowing how many businesses will be affected by the rule amendment and how many will object to the designations.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are four non-small businesses in the oil and gas industry (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . It is anticipated that this rule amendment will have a neutral fiscal impact to businesses as some will see a reduction in operatorship hearings, which would result in less attorney fees, travel, etc., while those who object to operatorship designations will need to appear before the Board. However, a total fiscal impact cannot be estimated as there is no way of knowing how many businesses will be affected by the rule amendment and how many will object to the designations.
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, businesses, or local government entities.

F) Compliance costs for affected persons:			
There will be no compliance costs for oil and gas operators.			
G) 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	FY2021	FY2022	FY2023
State Government	\$15,000	\$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	\$15,000	\$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	\$-15,000	\$0	\$0
H) 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.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
The Division anticipates a fiscally neutral impact to both state government and businesses over the long run. In the short term, the Division anticipates one-time costs to upgrade the Oil and Gas program's website. The Division anticipates that these costs will be offset over time by a			

reduction in staff time spent on hearings regarding operatorship.

B) Name and title of department head commenting on the fiscal impacts:

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 40-6-1 et seq.		
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/15/2020

10. This rule change MAY become effective on: 07/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	John Baza, Director	Date:	06/01/2020
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R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-3. Drilling and Operating Practices.

R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or

NOTICES OF PROPOSED RULES

Indian lease requirements and approved by the appropriate agency for ~~any~~ wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

3.1. The bond for drilling or operating wells shall remain in full force and effect until liability thereunder is released by the division.

3.2. Release of liability shall be conditioned upon compliance with the rules and orders of the ~~Board~~.

4. For ~~any~~ drilling or operating wells, the bond amounts for individual wells and blanket bonds required in ~~Subsections (5) and (6)~~ represent base amounts adjusted to year 2002 average costs for well plugging and site restoration. The base amounts are effective immediately upon adoption of this bonding rule, subject to division notification as described in ~~Subsection (4.1)~~.

4.1. The division shall provide written notification to each operator of the need to revise or establish bonds in amounts required by this bonding rule.

4.2. Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with this bonding rule.

4.3. If the division finds that a well subject to this bonding rule is in violation of ~~Section R649-3-36~~, Shut-in and Temporarily Abandoned Wells, the division shall require a bond amount for the applicable well in the amount of actual plugging and site restoration costs.

4.4. The division shall provide written notification to an operator found in violation of ~~Section R649-3-36~~, and identify the need to establish increased bonding for shut-in wells.

4.4.1. Within 30 days of notification by the division, the operator shall submit to the division an estimate of plugging and site restoration costs for division review and approval.

4.4.2. Upon review and approval of the cost estimate, the division will provide a notice of approval back to the operator specifying the approved bond amount for shut-in wells.

4.4.3. Within 120 days of receiving such notice of approval, the operator shall post a bond with the division in compliance with this bonding rule.

5. The bond amount for drilling or operating wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of at least \$1,500, for each such well.

5.2. For wells of more than 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of at least \$15,000 for each such well.

5.3. For wells of more than 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of at least \$30,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of at least \$60,000 for each such well.

6. If, prior to the July 1, 2003 revision of this bonding rule, an operator is drilling or operating more than one well on lands with fee or privately owned minerals, and a blanket bond was furnished and accepted by the division in lieu of individual well bonds, that operator shall remain qualified for a blanket bond with the division subject to the amounts described by this bonding rule.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover ~~any~~ wells that the operator

may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of at least \$15,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of at least \$120,000 shall be required.

6.4. Subsequent to the July 1, 2003 revision of this rule, operators who desire to establish a new blanket bond that consists either fully or partially of a collateral bond as described in subsection 10.2. shall be qualified by the division for such blanket bond.

6.4.1. Operators who elect to establish a surety bond as a blanket bond shall not require qualification by the division.

6.4.2. In those cases where operator qualification for blanket bond is required, the division will review the following criteria and make a written finding of the operator's adequacy to meet the criteria before accepting a new blanket bond:

6.4.3. The ratio of current assets to current liabilities shall be 1.20 or greater, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

6.4.4. The ratio of total liabilities to stockholder's equity shall be 2.50 or less, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a ~~request~~ with the ~~Agency~~ ~~action~~ with the ~~Board~~ for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the ~~Board~~ may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well or when reviewing a change of operator for a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may require a change in the form or the amount of bond coverage. In such cases, the division will support its case for a change of bond coverage in the form of written findings to the operator of record of the well and provide a schedule for completion of the requisite changes.

8.1 Appeals of mandated bond amount changes will follow procedures established by ~~Section R649-10~~, Administrative Procedures.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations that would result in suspension or revocation of the surety's or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and

which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". ~~[All]~~~~s~~ Surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 10.1.1. will have 120 days from the date of division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of ~~[s]~~Subsection (10.1.1)~~[-]~~, the operator has 120 days after notice from the division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator that is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive ~~all~~~~any~~ rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in ~~[s]~~Subsections (5)~~[-]~~ and (6)~~[-]~~ of ~~all~~~~any~~ collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations that might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in ~~[s]~~Subsections (5)~~[-]~~ and (6).

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide sufficient coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under ~~[s]~~Subsection (15).

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. When the operator of wells covered by a blanket bond changes, the division will review the financial eligibility of a new operator for blanket bonding as described in ~~[s]~~Subsection (6.4)~~[-]~~, and the division will make a written finding concerning the applicability of blanket bonding to the prospective new operator.

14.4. Transfer of the ownership of property does not cancel liability under an existing bond until the division reviews and approves a change of operator for any wells affected by the transfer of ownership.

14.5. If a transfer of the ownership of property is made and an operator wishes to request a change to a new operator of record for the affected wells, then the following requirements shall be met:

14.5.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee, and the operator shall request a change of operator for the affected wells.

14.5.2. The request shall describe each well by reference to its well name and number, API number, and its location, as described by the section, township, range, and county, and shall also include a proposed effective date for the operator change.

14.5.3. The request shall contain the endorsement of the new operator accepting such change of operator.

14.5.4. The request shall contain evidence of the new operator's bond coverage.

NOTICES OF PROPOSED RULES

14.5.5. The request may include a request to cancel liability for the well[(s)] included in the operator change that are listed under the existing operator's bond upon approval by the division of an adequate replacement bond in the name of the new operator.

14.6. Upon receipt of a request for change of operator, the division will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the division will issue a notice of approval of the change of operator.

14.6.1. If the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the applicable well[(s)], the division may deny the change of operator, or the division may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the division will support its case for a change of the new operator's bond coverage in the form of written findings, and the division will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable well[(s)] and the proposed new operator.

14.7. If the request for operator change included a request to cancel liability under the existing operator's bond in accordance with [s]Subsection (14.5.5)[-], and the division approves the operator change, then the division will issue a notice of approval of termination of liability under the existing bond for the wells included in the operator change. When the division has approved the termination of liability under a bond, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change.

14.8. If [aH]any of the wells covered by a bond are affected by an operator change, the bond may be released by the division in accordance with [s]Subsection (15).

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division or the division has issued a notice of approval of termination of liability for [aH]well[s] covered by an existing bond.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of any previously plugged well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in [s]Subsection (15.2).

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the [B]board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with [s]Subsection (15.1.1)[-], the division shall within 30 days or as soon thereafter as

weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to [s]Subsection (15.1.5)[-], or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under Subsection R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in [s]Subsection (15.3)[-] shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in [s]Subsection (15.3)[-] shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the [F]forfeiture of [B]bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the [B]board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in [s]Subsection (15.3)[-], in addition to the notice requirements of the [B]board procedural rules.

16.4. After proper notice and hearing, the [B]board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well~~[-or wells]~~ to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the [B]board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator [a]any costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of [s]Subsection (16.7)[-], then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

R649-3-2. Location And Siting of Vertical Wells and Statewide Spacing for Horizontal Wells.

1. In the absence of special orders of the board establishing drilling units or authorizing different well density or location patterns for particular pools or parts thereof, each oil and gas well shall be located in the center of a 40 acre quarter-quarter section, or a substantially equivalent lot or tract or combination of lots or tracts as shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center location, a "window" 400 feet square.

1.1. No oil or gas well shall be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool.

1.2. No oil or gas well shall be completed in a known pool unless it is located more than 920 feet from any other well completed in and capable of producing oil or gas from the same pool.

2. The division shall have the administrative authority to determine the pattern location and siting of wells adjacent to an area for which drilling units have been established or for which a request for agency action to establish drilling units has been filed with the board and adjacent to a unitized area, where there is sufficient evidence to indicate that the particular pool underlying the drilling unit or unitized area may extend beyond the boundary of the drilling unit or unitized area and the uniformity of location patterns is necessary to ensure orderly development of the pool.

3. In the absence of special orders of the [B]board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall not be closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the [Application for Permit to Drill]APD for a horizontal well shall be given by certified mail to [a]any owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of Subsections (5), (6) and (7).

9. Exceptions to any of the above referenced conditions of Subsections (3) through (7) may be approved upon proper application pursuant to Section R649-3-3, Exception to Location and Siting of Wells, or Section R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a [R]request for [A]agency [A]action [~~(Petition)~~] filed in accordance with ~~[the Board's Procedural Rules]~~Section 40-6-5.

R649-3-3. Exception to Location and Siting of Wells.

1. Subject to the provisions of Subsection R649-3-11.1.2, the division shall have the administrative authority to grant an exception to the locating and siting requirements of Section R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from [a]each owner[s] within a 460 foot radius of the proposed well location when such exception is to the requirements of Subsection R649-3-2, or;

1.3. Written consent from [a]any owner[s] of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to Subsection R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with Subsection R649-3-2 or [B]board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with Subsection R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of [a]any land[s] within a 460 foot radius of the proposed well location when such exception is to the requirements of Subsection R649-3-2, or

NOTICES OF PROPOSED RULES

3.5. The names of owners of ~~[all]~~any directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by Subsection R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-4. Permitting of Wells to be Drilled, Deepened or Plugged-Back.

1. Prior to the commencement of drilling, deepening or plugging back of any well, exploratory drilling such as core holes and stratigraphic test holes, or any surface disturbance associated with ~~[such activity]~~these activities, the ~~[operator]~~owner shall submit a completed APD to the division~~[Form 3, Application for Permit to Drill, Deepen, or Plug Back]~~ and obtain approval by the division. ~~[Approval shall be given by the division if it appears that the contemplated location and operations are not in violation of any rule or order of the board for drilling a well.]~~Except as provided in Subsections (4), (5) and (11) below, only APDs submitted by an owner qualifying as a designated operator shall be approved by the division.

2. The following information shall be included for a ~~[as part of the]~~ completed ~~[Application for Permit to Drill, Deepen, or Plug Back]~~APD:~~[-]~~

2.1. The name, address, telephone number, and electronic contact information of the owner~~[person to contact if additional information is needed.]~~

2.2. Proper identification of ~~[the]~~any relevant oil and gas leases, including identification of whether the leases are~~[as]~~ state, federal, Indian, or fee;~~[-]~~

2.3. Proper identification of the federal or state unit, if the well is located within a federal or state unit.

2.4. A plat or map prepared by a licensed surveyor or engineer that accurately provides: (a) the proposed well's surface and terminus location as perpendicular distances from Public Land Survey System (PLSS) section lines; (b) the PLSS quarter-section or lot, section, township, range, and principal meridian where the proposed well is to be located; (c) bearings and distances of any pertinent PLSS section lines; (d) bearing and distance from the proposed well's surface to the proposed well's terminus location; and (e) latitude and longitude coordinates of the proposed well's surface and terminus location, with any provided bearings, distances, and coordinates conforming to a coordinate reference system having datum, north reference, and measurement units acceptable to the division;~~[A plat or map, preferably on a scale of one inch equals 1,000 feet, prepared by a licensed surveyor or engineer, that shows the proposed well location. For directional wells, both surface and bottomhole locations should be marked.]~~

2.5. A copy of the Division of Water Rights approval, or the identifying number of approval~~[or the identifying number of the approval]~~ for use of water at the drilling site;~~[-]~~

2.6. A drilling program containing the following information:~~[shall also be submitted as part of a complete APD.]~~

2.6.1. The estimated tops of important geologic markers;~~[-]~~

2.6.2. The estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral-bearing formations are expected to be encountered, and the ~~[owner's or operator's]~~ plans for protecting such resources;~~[-]~~

2.6.3. The ~~[owner's or operator's]~~ minimum specifications for pressure control equipment to be used and a schematic diagram thereof showing sizes, pressure ratings or API series, proposed testing procedures and testing frequency;~~[-]~~

2.6.4. Any supplementary information more completely describing the drilling equipment and casing program;~~[as required by Form 3, Application for Permit to Drill, Deepen, or Plug Back.]~~

2.6.5. The type and characteristics of the proposed circulating medium ~~[or mediums]~~ to be employed in drilling, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the mud system;~~[-]~~

2.6.6. The anticipated type and amount of testing, logging, and coring;~~[-]~~

2.6.7. The expected bottom hole pressure and any anticipated abnormal pressures or temperatures or potential hazards, such as hydrogen sulfide, that are~~[H₂S rules are found in R649-3-12]~~ expected to be encountered, along with contingency plans for mitigating such identified hazards;~~[-]~~

2.6.8. Any other relevant or unique information regarding ~~[facets of]~~ the proposed oil and gas operations that ~~[the lessee or operator desires to point out for]~~ would assist the division's assessment and consideration of the application; and~~[-]~~

2.6.9. If an ~~[Application for Permit to Drill, Deepen, or Plug Back]~~APD is for a proposed horizontal or directional well, a horizontal or directional well diagram clearly showing the well bore path, including the distance and bearing from the surface through the terminus of the lateral~~[shall be submitted.]~~, the target location within the intended producing interval, a justification for any intentional deviation, and evidence that the written consent of the affected owners has been obtained, if required under other provisions of R649-3;

2.7. A self-certification from the owner, evidenced by an affidavit or declaration in conformity with Section 78B-18a-101, et seq., that the owner satisfies the criteria set forth in Subsection R649-2-4(1) or (2);~~[Form 5, Designation of Agent or Operator shall be filed when the operator is a person other than the owner.]~~

2.8. If the well will be located on the surface of ~~[S]~~state or ~~[F]~~fee lands~~[surface]~~, an APD will not be approved until an Onsite Pre-drill Evaluation is performed as outlined in Subsection R649-3-18.

~~[3. Two legible copies, carbon or otherwise, of the APD filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.~~

~~4. Approval of the APD shall be valid for a period of 12 months from the date of such approval. Upon approval of an APD, a well will be assigned an API number by the division. The API number should be used to identify the permitted well in all future correspondence with the division.~~

~~5. If a change of location or drilling program is desired, an amended APD shall be filed with the division and its approval obtained. If the new location is at an authorized location in the approved drilling unit, or the change in drilling program complies with the rules for that area, the change may be approved verbally or by telegraph. Within five days after obtaining verbal or telegraphic authorization, the operator shall file a written change application with the division.]~~ 3. The division shall approve the APD if it finds the APD to be complete and otherwise in accordance with the rules of the division and orders of the board. Notice of the approval shall be posted on the division's website in a readily accessible and clearly identifiable format.

4. After an APD is approved, a non-applicant working interest owner within the drilling unit, or in the absence of a board order establishing a drilling unit, a non-applicant owner who has either: (a) a working interest in a lease covering the lands in which the well will physically penetrate and in the targeted formations from which the well

will produce; or (b) owns any unleased oil and gas in the lands which the well will physically penetrate and in the targeted formations from which the well will produce, may protest the APD approval and designation of operator by filing a request for agency action with the board within ten calendar days of the electronic posting of the approved APD by the division on its website in accordance with Section R649-2-4(3); provided, if a lease or contract to acquire a lease will expire before the 10-day period expires, the division may, in its sole discretion, shorten the 10-day period upon written application of the operator outlining those circumstances and providing a copy of the expiring lease or contract.

4.1. The basis for the protest shall be limited to the following grounds: (a) the designated operator's inability to timely, efficiently, effectively, and economically develop the drilling unit, (b) failure by the designated owner to satisfy any of the required criteria for designation of an operator as set forth in R649-2-4; or (c) a non-applicant working interest owner who can demonstrate good cause for drilling an alternate well.

4.2. Upon the timely filing of a request for agency action protesting an approved APD, the approved APD and any actions related to preparation for drilling shall be stayed pending resolution by the board.

4.3. Any activity commenced after the an approved APD has been electronically posted by the division but before the ten calendar day period has expired, will not constitute a violation of the APD, but will be at the designated operator's sole risk and expense, shall not confer any implied or express rights with respect to operatorship designation, and shall not be deemed preparation for drilling purposes of Section R649-2-4.

5. In the absence of a JOA, or when a JOA is imposed by the board pursuant to Section 40-6-6.5(2), and when good cause exists, an owner may file a request for agency action seeking board approval to drill a proposed well when the designated operator has refused to file an APD or drill the proposed well. If the request for agency action is granted by the board, the division may then approve an APD submitted by the non-designated operator owner if the division finds the APD to be complete and otherwise filed in accordance with the rules of the division and orders of the board.

6. A well will be assigned an API number by the division. The API number should be used to identify the permitted well in any future correspondence with the division. Unless otherwise revoked, approval of the APD shall be valid for a period of twelve months from the date the APD was electronically posted on the division's website.

7. If a change of well location or drilling program is desired, an amended APD shall be timely filed with the division and its approval obtained before preparation for drilling occurs at the alternate location. If the APD has already been approved, the requested change should be submitted via sundry notice and approved through the division's ePermit system.

8. After a well has been completed or plugged and abandoned, it shall not be reentered without the operator first submitting a new APD and obtaining the division's approval. The division will grant [A] approval [shall be given if it appears] if the designated operator provides evidence that the appropriate [a] bond has been furnished or waived, as required by Section R649-3-1, [Bonding,] and the contemplated work or operations is not in violation of any rule or order of the board.

[7-]9. A [n] designated operator [or owner-] who applies for an APD in an area not subject to an [special] order of the board establishing a drilling unit[s], may contemporaneously or subsequently file a [R] request for [A] agency [A] action to establish a drilling unit[s] for the

subject[an] area not to exceed the area reasonably projected by the operator or owner to be underlain by the targeted reservoir.

[8-]10. Any application for an APD and any actions related to preparation for drilling shall be stayed pending final determination of any request for agency action filed by an interested person, when the request is the establishment of a drilling unit or for the modification of existing drilling units for the spacing of wells. [An APD for a well within the area covered by a proper Request for Agency Action that has been filed by an interested person, or the division or the board on its own motion, for the establishment of drilling units or the revision of existing drilling units for the spacing of wells shall be held in abeyance by the division until such time as the matter has been noticed, fully heard and determined.]

[9-]11. If the other conditions required for a completed APD have been fulfilled, a [A]n exception to Subsection R649-3-4-[10] [8]) shall be made and an [permit] APD shall be approved [issued] by the division if the designated [an owner or] operator files a self-certification, evidenced by an affidavit or declaration in conformity with Section 78B-18a-101, et seq. [sworn statement] demonstrating [to the division's satisfaction-] that on [and] or after the date the [R] request for [A] agency [A] action [requesting the establishment of drilling units was filed, or the action of the division or board was taken; and];

[9-1-] (i) [F] the designated [owner or] operator has the right or obligation under the terms of an existing contract to drill the requested well; or

[9-2-] (ii) [F] the owner or designated operator has a leasehold estate or right to acquire a leasehold estate under a contract that will be terminated unless [he is] they are permitted to commence the drilling of the required well before the matter can be fully heard and determined by the board.

R649-3-5. Identification.

1. Every drilling and producible well shall be identified by a sign posted on the derrick or in a conspicuous place near the well.

2. The sign shall be of durable construction. The lettering on the sign shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 25 feet.

3. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number or name of the well, the name of the owner or operator, the lease name, and the location of the well by quarter section, township, and range.

R649-3-6. Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in Subsection R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The

NOTICES OF PROPOSED RULES

division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of [all]any testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of [all]any casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division [all]any fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

R649-3-7. Well Control.

1. When drilling in wildcat territory, the owner or operator shall take [all]any reasonably necessary precautions for keeping the well under control at [all]any time[s] and shall provide, at the time the well is started, proper high pressure fittings and equipment. [All-p]Pressure control equipment shall be maintained in good working condition at [all]any time[s].

2. In [all]any proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. [All-p]Pressure control equipment shall be maintained in good working condition at [all]any time[s].

3. Upon installation, [all]any ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. [All]Any BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. [All]Any tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

R649-3-8. Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and [all]any subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below [all]each known or reasonably estimated, utilizable, domestic, fresh water levels[-]; and

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

R649-3-9. Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until [all]each upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

R649-3-10. Tolerances for Vertical Drilling.

1. Deviation from the vertical for short distances is permitted in the drilling of a well without special approval to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

2. [All]Each well[s] shall be drilled such that the surface location of the well and [all]any points along the intended well bore shall be within the tolerances allowed by Subsection R649-3-2, Location and Siting of Vertical Wells and Statewide Spacing for Horizontal Wells, or the appropriate board order.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under Subsection R649-3-10, no well may be intentionally deviated unless the operator shall first file application and obtain approval from the division.

1.1. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of [all]the any oil and gas within a radius of 460 feet from [all]any points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program.

1.2. An application pertaining to a well with a surface location outside the tolerances allowed by Subsection R649-3-2 or the appropriate board order, but with the point of penetration of the targeted productive zone(↔) and bottom hole location within said tolerances, may be approved by the division without notice and hearing conditioned upon the operator filing a certification included with the application that it will not perforate and complete the well in any other zone(↔) outside of said tolerances without complying with the requirements of

Subsection R649-3-11.1.1. Under these circumstances, no additional exception location approval under Subsection R649-3-3 is required.

1.3. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

R649-3-12. Drilling Practices for Hydrogen Sulfide H₂S Areas and Formations.

1. This rule shall apply to drilling, re-drilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain H₂S in excess of 20 ppm and to areas where the presence or absence thereof is unknown.

2. A written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H₂S gas shall be submitted to the division as part of the initial APD for a well or as a sundry notice.

3. ~~Any~~ Any proposed drill site location[s] shall be planned to obtain the maximum safety benefits consistent with the rig configuration, terrain, prevailing winds, etc.

3.1. The drilling rig shall, where possible, be situated so that prevailing winds blow across the rig in a direction toward the reserve pit and away from escape routes.

3.2. On-site trailers shall be located to allow reasonably safe distances from both the well and the outlet of the flare line.

4. At least two cleared areas shall be designated as crew briefing or safety areas.

4.1. Both areas shall be located at least 200 feet from the well, with at least one area located generally upwind from the well.

5. Protective equipment shall be provided by the operator or its drilling contractor for operating personnel and shall include the following:

5.1. An adequate number of positive pressure type self-contained breathing apparatus to allow ~~any~~ any personnel normally involved on a drilling location immediate access to such equipment, with a minimum of one working apparatus available for the immediate use of each rig hand in emergencies.

5.2. Chalk boards or note pads to be used for communication when wearing protective breathing apparatus.

5.3. First aid supplies.

5.4. One resuscitator complete with medical oxygen.

5.5. A litter or stretcher.

5.6. Harnesses and lifelines.

5.7. A telephone, radio, mobile phone, or other communication device that provides emergency two-way communication from a safe area near the well location.

6. Each drill site shall have an H₂S detection and monitoring system that activates audible and visible alarms when the concentration of H₂S reaches the threshold limit of 20 ppm in air. This equipment shall have a rapid response time and be capable of sensing a minimum of ten ppm H₂S in air, with at least three sensing points, located at the shale shaker, on the derrick floor, and in the cellar. Other sensing points shall be located at other critical areas where H₂S might accumulate. Portable H₂S detection equipment capable of sensing an H₂S concentration of 20 ppm shall be available for ~~any~~ any working personnel and shall be equipped with an audible warning signal.

7. Equipment to indicate wind direction at ~~any~~ any time[s] shall be installed at prominent locations. At least two wind socks or streamers shall be located at separate elevations at the well location and shall be easily visible from ~~any~~ any areas of the location. Windsocks or streamers shall be located in illuminated areas for night operations.

8. When H₂S is encountered during drilling, well marked, highly visible warning signs shall be displayed at the rig and along ~~any~~ any access routes to the well location.

8.1. The signs shall warn of the presence of H₂S and shall prohibit approach to the well location when red flags are displayed.

8.2. Red flags shall be displayed when H₂S is present in concentrations greater than 20 ppm in air as measured on the equipment required under Subsection R649-3-12-(6).

9. Unless adequate natural ventilation is present, portable fans or ventilation equipment shall be located in work areas to disperse H₂S when it is encountered.

10. A flare system shall be utilized to safely gather and burn H₂S bearing gas.

10.1. Flare lines shall be located as far from the operating site as feasible and shall be located in a manner to compensate for wind changes.

10.2. The outlets of ~~any~~ any flare lines shall be located at least 150 feet from the well head unless otherwise approved by the division.

11. Sufficient quantities of additives shall be maintained on location to add to the mud system to scavenge or neutralize H₂S.

R649-3-13. Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under Subsection R649-3-7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

R649-3-14. Fire Hazards on the Surface.

1. ~~Any~~ Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 100 feet from the well location, tanks, separator, or any structure. ~~Any~~ Any waste oil or gas shall be burned or disposed of in a manner to avert creation of a fire hazard.

2. Any gas other than poisonous gas escaping from the well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned in a suitable flare.

R649-3-15. Pollution and Surface Damage Control.

1. The operator shall take ~~any~~ any reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on ~~any~~ any operations and maintain the property at ~~any~~ any time[s] in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

NOTICES OF PROPOSED RULES

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, ~~at~~any scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a work~~man~~personlike manner that will preclude leakage and provide for ~~at~~any applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

R649-3-16. Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the ~~D~~division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the ~~D~~division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the ~~D~~division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility ~~and~~or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

R649-3-17. Inspection.

1. Inspection of wells shall be performed by the division to determine operator compliance with the rules and orders of the board.

2. The inspection shall not interfere with the mechanical operation of facilities or equipment used in drilling and production operations.

3. Inspections of operations involving a safety hazard shall not be conducted, nor shall an inspection be conducted that may cause a safety hazard.

R649-3-18. On-site Predrill Evaluation.

1. An on-site predrill evaluation of drilling operations located on state or private land shall be scheduled and conducted by the division

prior to approval of an APD and no later than 30 days after receipt by the division of a complete APD.

1.1. An on-site predrill evaluation may be performed by the division prior to submittal of a complete APD at the written request of the operator.

1.2. The division, the operator, and other persons associated with the surface management or construction of the well site shall attend the predrill evaluation.

1.3. When appropriate, the operator's surveyor and archaeologist may also participate in the predrill evaluation.

1.4. When the surface of the land involved is privately owned, the operator shall include in the APD the name, address, and telephone number of the private surface owner as shown on the ~~real~~property records of the county where the well is located.

1.5. The surface owner shall be invited by the division to attend the predrill evaluation.

1.6. The surface owner's inability to attend the predrill evaluation shall not delay the scheduled evaluation.

2. Special stipulations concerning surface use or justifications for well spacing exceptions may be addressed and developed at the predrill evaluations.

2.1. Special stipulations shall be incorporated as conditions of the approved APD, together with any additional conditions determined by the division to be necessary following a review of the complete application.

R649-3-19. Well Testing.

1. Each operator shall conduct a stabilized production test of at least 24 hours duration not later than 15 days following the completion or recompletion of any well for the production of oil or gas.

1.1. The results of the test shall be reported in writing to the division within 15 days after completion of the test.

1.2. Additional tests shall be made as requested by the division.

2. The division may request subsurface pressure measurements on a sufficient number of wells in any pool to provide adequate data to determine reservoir characteristics.

3. Upon written request, the division may waive or extend the time for conducting any test.

4. A gas-oil ratio "GOR" test shall be conducted not later than 15 days following the completion or recompletion of each well in a pool that contains both oil and gas.

4.1. The average daily oil production, the average daily gas production and the average GOR shall be recorded.

4.2. The results of the GOR test shall be reported in writing to the division within 15 days after completion of the test.

4.3. A GOR test of at least 24 hours duration shall satisfy the requirements of Subsection R649-3-19-(1).

5. When the results of a multipoint test or other approved test for the determination of gas well potential have not been submitted to the division within 30 days after completion or recompletion of any producible gas well, the division may order this test to be made.

5.1. ~~At~~Any data pertinent to the test shall be submitted to the division in legible, written form within 15 days after completion of the test.

5.2. The performance of a multipoint or other approved test shall satisfy the requirements of Subsection R649-3-19-(1).

6. ~~At~~Any tests of any producible gas well will be taken in accordance with the Manual of Back-Pressure Testing of Gas Wells published by the Interstate Oil and Gas Compact Commission, with necessary modifications as approved by the division.

R649-3-20. Gas Flaring or Venting.

1. Produced gas from an oil well, also known as associated gas or casinghead gas, may be flared or vented only in the following amounts:

1.1. Up to 1,800 MCF of oil well gas may be vented or flared from an individual well on a monthly basis at any time without approval.

1.2. During the period of time allowed for conducting the stabilized production test or other approved test as required by Subsection R649-3-19, the operator may vent or flare ~~any~~ produced oil well gas as needed for conducting the test.

1.2.1. The operator shall not vent or flare gas that is not necessary for conducting the test or beyond the time allowed for conducting the test.

1.3. During the first calendar month immediately following the time allowed for conducting the initial stabilized production test as required by Subsection R649-3-19.1, the operator may vent or flare up to 3,000 MCF of oil well gas without approval.

1.4. Unavoidable or short-term oil well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

2. Produced gas from a gas well may be vented or flared only in the following amounts:

2.1. During the period of time allowed for conducting the stabilized production test, the multipoint test, or other approved test as required by Subsection R649-3-19, the operator may vent or flare ~~any~~ produced gas well gas as needed for conducting the test.

2.2. The operator shall not vent or flare gas which is not necessary for conducting the tests or beyond the time allowed for conducting the tests.

2.3. Unavoidable or short-term gas well gas venting or flaring may occur without approval in accordance with Subsections R649-3-20.4, 4.1, 4.2, and 4.3.

3. If an operator desires to produce a well for the purpose of testing and evaluation beyond the time allowed by Subsection R649-3-19 and vent or flare gas in excess of the aforementioned limits of gas venting or flaring, the operator shall make written request for administrative action by the division to allow gas venting or flaring during such testing and evaluation.

3.1. The operator shall provide any information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

3.2. Upon such request and based on the justification information presented, the division may authorize gas venting or flaring at unrestricted rates for up to 30 days of testing or no more than 50 MMCF of gas vented or flared, whichever is less.

4. Once a well is completed for production and gas is being transported or marketed, the operator is allowed unavoidable or short-term gas venting or flaring without approval only in the following cases:

4.1. Gas may be vented or released from oil storage tanks or other low pressure oil production vessels unless the division determines that the recovery of such vapors is warranted.

4.2. Gas may be vented or flared from a well during periods of line failures, equipment malfunctions, blowouts, fires, or other emergencies if shutting in or restricting production from the well would cause waste or create adverse impact on the well or producing reservoir.

4.3. The operator shall provide immediate notification to the division in ~~any~~ such cases in accordance with Subsection R649-3-32, Reporting of Undesirable Events.

4.4. Upon notification, the division shall determine if gas venting or flaring is justified and specify conditions of approval if necessary.

4.5. Gas may be vented or flared from a well during periods of well purging or evaluation tests not exceeding a period of 24 hours or a maximum of 144 hours per month.

4.6. The operator shall provide subsequent written notification to the division in ~~any~~ such cases.

5. If an operator wishes to flare or vent a greater amount of produced gas than allowed by this rule, the operator must submit a ~~request for~~ ~~agency~~ ~~action~~ to the board to be considered as a formal board docket item. The request should include the following items:

5.1. A statement justifying the need to vent or flare more than the allowable amount.

5.2. A description of production test results.

5.3. A chemical analysis of the produced gas.

5.4. The estimated oil and gas reserves.

5.5. A description of the reinjection potential or other conservation oriented alternative for disposition of the produced gas.

5.6. A description of the amount of gas used in lease operations.

5.7. An economic evaluation supporting the operator's determination that conservation of the gas is not economically viable. The evaluation should utilize any engineering or geologic data available and should consider total well production, not just gas production, in presenting the profitability and costs for beneficial use of the gas.

5.8. Any other information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

6. Upon review of the request for approval to vent or flare gas from a well, the board may elect to:

6.1. Allow the requested venting or flaring of gas.

6.2. Restrict production until the gas is marketed or otherwise beneficially utilized.

6.3. Take any other action the board deems appropriate in the circumstances.

7. When gas venting or flaring from a well has not been approved by the division or the magnitude and duration of venting or flaring exceeds the amounts specified in these rules or any division or board approval, then the board may issue a formal order to alleviate the noncompliance ~~and~~ or require the operator to appear before the board to provide justification of such venting or flaring. The division shall notify the appropriate governmental taxing and royalty agencies of any unapproved venting or flaring and of any subsequent board action.

8. No extraction plant processing gas in Utah shall flare or vent such gas unless such venting or flaring is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas vented or flared is of no commercial value.

9. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or nonscheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process, and market ~~any~~ of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of such shut-down or curtailment, following which the division shall take such action as is necessary.

R649-3-21. Well Completion and Filing of Well Logs.

1. For the purposes of this rule only, a well shall be determined to be completed when the well has been adequately worked to be capable of producing oil or gas or when well testing as required by the division is concluded.

2. Within 30 days after the completion of any well drilled or redrilled for the production of oil or gas, Form 8, Well Completion or Recompletion Report and Log, shall be filed with the division, together with a copy of the electric and radioactivity logs, if run.

3. In addition, one copy of ~~all~~any drillstem test reports, formation water analyses, porosity, permeability or fluid saturation determinations, core analyses and lithologic logs or sample descriptions if compiled, shall be filed with the division.

4. As prescribed under Subsection R649-2-12, Test and Surveys, the directional, deviation ~~and~~or measurement-while-drilling (MWD) survey for a horizontal well shall be filed within 30 days of being run. Such directional, deviation ~~and~~or MWD survey specifically related to well location or well bore path shall not be held confidential. Other MWD survey data that presents well log, or other geological, geophysical, or engineering information may be held confidential as provided in Subsection R649-2-11, Confidentiality of Well Log Information.

R649-3-22. Completion Into Two or More Pools.

1. The completion of a single well into more than one pool may be permitted by submitting an application to the division and securing its approval.

1.1. The application shall be submitted on Form 9, Sundry Notice and Report and shall be accompanied by an exhibit showing the location of ~~all~~any well[s] on contiguous oil and gas leases or drilling units overlying the pool.

1.2. The application shall set forth ~~all~~any material facts involved and the manner and method of completion proposed.

2. If oil or gas is to be produced from two or more pools open to each other through the same string of casing so that commingling will take place, the application must also be accompanied by a description of the method used to account for and to allocate production from each pool so commingled.

3. The application shall include an affidavit showing that the operator has provided a copy of the application to the owners of ~~all~~any contiguous oil and gas leases or drilling units overlying the pool.

3.1. If none of these owners file a written objection to the application within 15 days after the date the application is filed with the division, the application may be considered and approved by the division without a hearing.

3.2. If a written objection is filed that cannot be resolved administratively, the application may be approved only after notice and hearing by the board.

R649-3-23. Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval~~(±)~~ and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of

recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

6. For the purpose of qualifying for a tax credit under ~~Utah Code Ann.~~Section 59-5-102(7), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under ~~Utah Code Ann.~~Section 59-5-102(7) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval~~(±)~~ that the well is currently completed in, but shall not include:

7.1. Routine maintenance operations such as pump changes, artificial lift equipment or tubing repair, or other operations that do not involve changes to the wellbore configuration or the geologic interval~~(±)~~ that it penetrates and that do not stimulate production beyond that which would be anticipated as the result of routine maintenance.

7.2. Operations to convert any well for use as a disposal well or other use not associated with enhancing the recovery of hydrocarbons.

7.3. Operations to convert a well to a Class II injection well for enhanced recovery purposes may qualify if the secondary or enhanced recovery project has received the necessary board approval.

8. A recompletion that may qualify under ~~Utah Code Ann.~~Section 59-5-102(7) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval~~(±)~~.

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of ~~Utah Code Ann.~~Section 59-5-102(7).

10. The division is responsible for approval of workover and recompletion operations that qualify for the tax credit.

10.1. If the operator disagrees with the decision of the division, the decision may be appealed to the board.

10.2. Appeals of ~~all~~any other workover and recompletion tax credit decisions should be made to the State Tax Commission.

R649-3-24. Plugging and Abandonment of Wells.

1. Before operations are commenced to plug and abandon any well the owner or operator shall submit a notice of intent to plug and abandon to the division for its approval.

1.1. The notice shall be submitted on Form ~~DOG-19~~9, Sundry Notice and Report on Wells.

1.2. A legible copy of a similar report and form filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

1.3. In cases of emergency the operator may obtain verbal or telegraphic approval to plug and abandon.

1.4. Within five days after receiving verbal or telegraphic approval, the operator shall submit a written notice of intent to plug and abandon on Form 9.

2. Both verbal and written notice of intent to plug and abandon a well shall contain the following information:

2.1. The location of the well described by section, township, range, and county.

2.2. The status of the well, whether drilling, producing, injecting or inactive.

2.3. A description of the well bore configuration indicating depth, casing strings, cement tops if known, and hole size.

2.4. The tops of known geologic markers or formations.

2.5. The plugging program approved by the appropriate federal agency if the well is located on federal or Indian land.

2.6. An indication of when plugging operations will commence.

3. A dry or abandoned well must be plugged so that oil, gas, water, or other substance will not migrate through the well bore from one formation to another.

3.1. Unless a different method and procedure is approved by the division, the method and procedure for plugging the well shall be as follows:

3.2. The bottom of the hole shall be filled to, or a bridge shall be placed at, the top of each producing formation open to the well bore, and a cement plug not less than 100 feet in length shall be placed immediately above each producing formation open to the well bore.

3.3. A solid cement plug shall be placed from 50 feet below a fresh water zone to 50 feet above the fresh water zone, or a 100 foot cement plug shall be centered across the base of the fresh water zone and a 100 foot plug shall be centered across the top of the fresh water zone.

3.4. At least ten sacks of cement shall be placed at the surface in a manner completely plugging the entire hole. If more than one string of casing remains at the surface, all annuli shall be so cemented.

3.5. The interval between plugs shall be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore.

3.6. The hole shall be plugged up to the base of the surface string with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore, at which point a plug of not less than 50 feet of cement shall be placed.

3.7. Any perforated interval shall be plugged with cement and any open hole porosity zone shall be adequately isolated to prevent migration of fluids.

3.8. A cement plug not less than 100 feet in length shall be centered across the casing stub if any casing is cut and pulled, a second plug of the same length shall be centered across the casing shoe of the next larger casing.

4. An alternative method of plugging, required under a federal or Indian lease, will be accepted by the division.

5. Within 30 days after the plugging of any well has been accomplished, the owner or operator shall file a subsequent report of plugging with the division. The report shall give a detailed account of the following items:

5.1. The manner in which the plugging work was carried out, including the nature and quantities of materials used in plugging and the location, nature, and extent by depths, of the plugs.

5.2. Records of any tests or measurements made.

5.3. The amount, size, and location, by depths of any casing left in the well.

5.4. A statement of the volume of mud fluid used.

5.5. A complete report of the method used and the results obtained, if an attempt was made to part any casing.

6. Upon application to and approval by the division, and following assumption of liability for the well by the surface owner, a well or other exploratory hole that may safely be used as a fresh water well need not be filled above the required sealing plugs set below the fresh water formation. The owner of the surface of the land affected may assume liability for any well capable of conversion to a water well by sending a letter assuming such liability to the division and by filing

an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

7. Unless otherwise approved by the division, all any abandoned wells shall be marked with a permanent monument showing the well number, location, and name of the lease. The monument shall consist of a portion of pipe not less than four inches in diameter and not less than ten feet in length, of which four feet shall be above the ground level and the remainder shall be securely embedded in cement. The top of the pipe must be permanently sealed.

8. If any casing is to be pulled after a well has been abandoned, a notice of intent to pull casing must be filed with the division and its approval obtained before the work is commenced.

8.1. The notice shall include full details of the contemplated work. If a log of the well has not already been filed with the division, the notice shall be accompanied by a copy of the log showing all any casing seats as well as all any water strata and oil and gas shows.

8.2. Where the well has been abandoned and liability has been terminated with respect to the bond previously furnished under Subsection R649-3-1, a \$10,000 plugging bond shall be filed with the division by the applicant.

R649-3-25. Underground Disposal of Drilling Fluids.

1. Operators shall be permitted to inject and dispose of reserve pit drilling fluids downhole in a well upon submitting an application for such operations to the division and obtaining its approval. Injection of reserve pit fluids shall be considered by the division on a case-by-case basis.

2. Each proposed injection procedure will be reviewed by the division for conformance to the requirements and standards for permitting disposal wells under Subsection R649-5-2 to assure protection of fresh-water resources.

3. The subsurface disposal interval shall be verified by temperature log, or suitable alternative, during the disposal operation.

4. The division shall designate other conditions for disposal, as necessary, in order to ensure safe, efficient fluid disposal.

R649-3-26. Seismic Exploration.

1. Form 1, Application for Permit to Conduct Seismic Exploration shall be submitted to the division by the seismic contractor at least seven days prior to commencing any type of seismic exploration operations. In cases of emergency, approval may be obtained either verbally or by telegraphic communication.

1.1. Changes of plans or line locations may be implemented in an emergency situation without division approval.

1.2. Within five days after the change is performed, the seismic contractor shall submit written notice of the change to the division.

1.3. The permit may be revoked at any time by the division for failure to comply with the rules and orders of the board.

1.4. Any request to deviate from the general plugging and operations procedures of these rules shall be included on the permit application.

1.5. The name, address, and telephone number of the seismic contractor's local contact shall be submitted to the division as soon as determined if not available when the permit application is submitted.

1.6. After review of the application for a seismic permit, the division may require written permission of the owner of the surface of the affected land if it is determined that the seismic operation may significantly impact any building, pipeline, water well, flowing spring, or other cultural or natural feature in the area.

NOTICES OF PROPOSED RULES

1.7. The permit will be in effect for six months from the date of approval. The permit may be extended upon application to and approval by the division.

2. Bonding shall not be required for seismic exploration requiring the drilling of shot holes.

3. Seismic contractors shall give the division at least 24 hours advance notice of the plugging of seismic holes. The notice shall include the date and time the plugging activities are expected to commence, the name and address of the seismic contractor responsible for the holes, and, if different, the name and address of the hole plugging company.

4. Unless the seismic contractor can prove to the satisfaction of the division that another method will provide adequate protection to ground water resources and other man-made or natural features and will provide long-term land stability, the following procedures shall be required for the conduct of seismic operations and hole plugging:

4.1. Seismic contractors shall take reasonable precautions to avoid conducting shot hole operations closer than 1,320 feet to any building, pipeline, water well, flowing spring, or other cultural/natural feature, e.g., a historical monument, marker, or structure, that may be adversely affected by the seismic operations.

4.2. When nonartesian water is encountered while drilling seismic shot holes, the holes shall be filled from the bottom up with a high grade bentonite/water slurry mixture.

4.3. The slurry shall have a density that is at least four percent greater than the density of fresh water and shall have a marsh funnel viscosity of at least 60 seconds per quart.

4.4. The density and viscosity of the slurry are to be measured prior to adding cuttings. Cuttings not added to the slurry are to be disposed of in accordance with Subsection R649-3-26-4.6.

4.5. Upon approval by the division, any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of the substitute plugging material are at least comparable to those of the bentonite/water slurry.

4.6. The hole shall be filled with the substitute plugging material from the bottom up to a depth of three feet below ground level.

4.7. A nonmetallic permaplug shall be set at a depth of three feet. The remaining hole shall be filled and tamped to the surface with cuttings and native soil.

4.8. The permaplug shall be imprinted with an approved identification number or mark.

4.9. When drilling with air only, and in completely dry holes, plugging may be accomplished by returning the cuttings to the holes, tamping the returned cuttings to the depth of three feet below ground level, and setting the permaplug topped with more cuttings and soil. A small mound shall be left over the hole for settling allowance.

4.10. If artesian flow, water flowing at the surface, is encountered in the drilling of any seismic hole, cement shall be used to seal off the water flow to prevent cross-flow, erosion, or contamination of fresh water supplies.

4.11. Unless severe weather conditions prevent access, the holes shall be cemented immediately.

4.12. Approval may be granted to seismic operator to plug a flowing hole in another manner, if it is proved to this division that the alternate method will provide adequate protection to ground water resources and provide long term land stability.

4.13. The owner of the surface of the land affected may assume liability for a seismic hole capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

4.14. Shotholes shall be properly plugged and abandoned as soon as practical after the shot has been fired.

4.15. No shothole shall be left unplugged for more than 30 days without approval of the division.

4.16. Until properly plugged, shotholes shall be covered with a tin hat or other similar cover.

4.17. The hats shall be imprinted with the seismic contractor's name or initials.

4.18. Any slurry, drilling fluids, or cuttings that are deposited on the surface around the seismic hole shall be raked or otherwise spread out to a height of not more than one inch above the surface, so that the growth of the natural grasses or foliage will not be impaired.

4.19. Restoration plans required by the Mined Land Reclamation Act, [~~Chapter 8 of Title 40~~Section 40-8], or by any other surface management agency will be accepted by the division.

4.20. The surface area around each seismic shothole shall be reclaimed and reseeded to its original condition insofar as such restoration is practical and is required by the surface management agency.

4.21. [~~All~~Any flagging, stakes, cables, cement, or mud sacks shall be removed from the drill site and disposed of in an acceptable manner.

5. Upon application to the division, approval may be obtained for preplugging of shotholes using coarse bentonite material or a suitable alternative used in the industry. Preplugging of holes in this manner shall be performed according to the following procedures:

5.1. A sales receipt indicating proof of purchase of an adequate amount of coarse bentonite to properly plug [~~all~~any] shotholes shall be submitted to the division upon request.

5.2. For shotholes drilled with air that are completely dry, the seismic contractor shall have the option of preplugging with the coarse bentonite material or of using an alternate plugging material under Subsection R649-3-26-4.3.

5.3. For conventionally drilled, wet holes, enough approved material shall be used to cover the initial water level, i.e., the depth of the initial water level in the hole prior to adding coarse bentonite material shall be equal to the final plug depth.

5.4. An additional ten feet of approved material shall be placed above this depth and hole cuttings shall be used to fill the remainder of the hole to a depth of three feet below ground level.

5.5. A nonmetallic plug imprinted with an approved identification number or mark shall be installed at this depth.

5.6. The remaining three feet of hole shall be filled and tamped to the surface with cuttings and native soil.

5.7. The remaining cuttings shall be raked or spread to a height not to exceed one inch above ground level.

5.8. When using heliportable drills and insufficient cuttings are available, the hole shall be preplugged with bentonite plugging material or an approved alternate material to a depth of three feet below ground level.

5.9. Installation of a nonmetallic plug and filling the remainder of the hole shall be performed as required by Subsection R649-3-26-5.3.

5.10. The coarse bentonite plugging material shall have the following specifications - chemically unaltered sodium bentonite, coarse ground, three quarter inch maximum size, not more than 19% moisture content and not more than 15% inert solids by volume.

6. Form 2, Seismic Exploration Completion Report shall be submitted to the Division within 60 days after completion of each seismic exploration project. The report shall include: Certification by the seismic contractor that [~~all~~any] shot holes have been plugged as prescribed by the division.

R649-3-27. Multiple Mineral Development.

1. Drilling operations conducted in areas designated by the board for multiple mineral development shall comply with [aH]any rules or orders of the board for drilling, casing, cementing, and plugging except as the general rules or orders may be modified by this rule.

2. It is the policy of the division to promote the development of [aH]any mineral resources on land under its jurisdiction. Consistent with that policy, operators engaged in oil and gas operations on lands on which operators are exploring for and developing mineral resources other than oil and gas may enter into a cooperative agreement with these other operators with respect to multiple mineral development. The agreement shall define:

2.1. The extent and limits of liability when one operator, either intentionally or unintentionally, interferes with or damages the deposits of another.

2.2. The coordination of access to and development of the area.

2.3. Mitigation of surface impact including but not limited to issues pertaining to relocation of natural gas pipeline gathering and distribution systems and other surface facilities occasioned by placement of a spent shale pile; phased or coordinated surface occupancy so as to allow each operator to enjoy his respective mineral estate with the least disruption of operations and damage to the oil and gas deposits, either directly or indirectly, through waste; and limitation of oil and gas operations in areas of concentrated surface oil shale facilities.

2.4. Mitigation of subsurface impact including but not limited to issues pertaining to the interface in the underground environment of oil shale mining operations with other mineral operations.

2.5. The extent of exchange of geological, engineering, and production data.

2.6. Other cooperative efforts consistent with multiple mineral development under the rules and orders of the board pertaining to oil and gas operations, oil shale operations, and mined land reclamation.

3. The division, together with the Division of Forestry, Fire and State Lands, and School and Institutional Trust Lands Administration shall be signatory to the agreement, where applicable.

4. In the event the operators cannot agree on cooperative development of their respective mineral deposits, or having once entered into a cooperative agreement subsequently disagree on the application of the terms and provisions thereof, any operator whose oil and gas or mining operation or deposit may be adversely affected or damaged by the operations of another operator may apply to the board for, or the board may on its own motion enter an order, after notice and hearing, delineating the respective rights and obligations of [aH]any operators with respect to development of [aH]any minerals concerned.

5. After notice and hearing the board may modify its order to more effectively carry out the policies of multiple mineral development.

R649-3-28. Designated Potash Areas.

1. In any area designated as a potash area, either by the board, or an appropriate state or federal government agency, [aH]any well[s] shall be drilled, cased, cemented, and plugged in accordance with the rules and orders of the board. The following minimum requirements and definitions shall also apply to the drilling, logging, casing, and plugging operations within the Salt Section to protect against migration of oil, gas, or water into or within any formation or zone containing potash. As used in this rule, Salt Section shall mean the Paradox Salt Section of Pennsylvanian Age.

2. Any drilling media used through the Salt Section shall be such that sodium chloride is not soluble in the media at normal temperatures.

3. Gamma ray-neutron, gamma ray-sonic or other appropriate logs shall be run promptly through the Salt Section. One field copy of the log through the Salt Section shall be submitted to the division within ten days, or upon the request of the division, whichever is the earlier.

4. A directional survey shall be run from a point at least 20 feet below the Salt Section to the surface. The survey shall be filed with the division prior to completion or plugging and abandonment of the well.

5. In addition to the requirements of the Subsection R649-3-8, any casing set into or through the Salt Section shall be cemented solidly through the Salt Section above the casing shoe.

6. Any cement used in setting casing or in plugging that comes in contact with the Salt Section shall be of such chemical composition as to avoid dissolution of the Salt Section and to provide weight, strength, and physical properties sufficient to protect uphole formations and prevent blowouts or uncontrolled flows.

7. If a well is dry, cement plugs at least 200 feet in length shall be placed across the top and the base of the Salt Section, across any oil, gas or water show, and across any potash zone.

7.1. Plugs shall not be required inside a properly cemented casing string. The division shall approve the location of the plugs after examining the appropriate logs, drilling and testing records for the well.

7.2. No well shall be temporarily abandoned with open hole in the Salt Section.

8. The division may inspect the drilling operations at [aH]any time[s], including any mining operations that may affect any drilling or producing well bores. A potash owner, if contributing by agreement to the logging and directional survey costs of a well, may inspect the well for compliance with this rule.

9. Before commencing drilling operations for oil or gas on any land within designated potash area, the operator shall furnish by registered mail, a copy of the APD, together with the plat or map required under Subsection R649-3-4, to [aH]any potash owners and lessees whose interests are within a radius of 2,640 feet of the proposed well.

10. After proper notice and hearing, the board may modify this rule for a particular well or area by requiring that greater or lesser precautions be taken to prevent the escape of oil, gas, or water from one stratum into another. The board may also expand or contract from the designated potash areas.

R649-3-29. Workable Coal Beds.

1. Prior to commencing drilling operations for oil and gas on any lands where there are mine workings, the operator shall furnish a copy of the APD, a plat or map as required under Subsection R649-3-4, and a designation of the proposed angle and direction of the well, if the well is to be deviated substantially from a vertical course, to [aH]any coal owners and lessees whose interests are within a radius of 5,280 feet of the proposed well.

2. A well penetrating one or more workable coal beds or mine workings shall be drilled to a depth and shall be of a size, to permit the placing of casing in the hole at the points and in the manner necessary to exclude [aH]any oil, gas or gas pressure from the coal bed, other than oil, gas or gas pressure originating in the coal bed.

3. Unless otherwise authorized by the division, the casing run through a coal bed shall be seated at least 50 feet into the closest impervious formation below the coal bed. The casing shall be cemented

NOTICES OF PROPOSED RULES

solidly through the coal bed to a height at least 50 feet into the closest impervious formation above the coal bed.

4. A directional survey or a cement bond log shall be performed and furnished to the division upon written request by the division.

5. Upon penetrating a coal bed the operator shall notify the division, in writing, before completing or plugging and abandoning the well.

R649-3-30. Underground Mining Operations.

1. Prior to commencing drilling operations for oil and gas on any land where there are known or suspected underground mining operations, solution mining operations or surface mining operations, including solar evaporation ponds, the operator shall include in the APD or in a separate cover letter, any information known to the operator concerning the name and address of the owner or operator of the mining workings.

2. The division may, with the concurrence of the operator, change the surface location of the proposed well if there appears to be any possibility of interference between the proposed well bore and the mine workings.

R649-3-31. Designated Oil Shale Areas.

1. Designated oil shale areas are subject to the general drilling, plugging and other performance standards described in this section, except where the board has adopted, by order, specific standards for individual oil shale areas. As of June 8, 2001, the board has adopted specific standards for individual oil shale areas by board orders in Cause Nos. 190-5(b), 190-3, and 190-13. The board may adopt specific standards in other areas, or modify the above orders, in the future.

2. Lands may be designated as an oil shale area by the board, either upon its own motion, or upon the petition of an interested person following notice and hearing.

3. As used in this rule, oil shale section means the sequence of strata containing oil shale beds, including any interbedded strata not containing oil shale, consisting of the Parachute Creek Member of the Green River Formation of Tertiary Age, defined as the stratigraphic equivalent of the interval between 1,428 feet and 2,755 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 API No. 43-047-15382 well drilled by Dekalb Agricultural Association, Inc. and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah. The Mahogany Zone is defined as the stratigraphic equivalent of the interval between 2,230 feet and 2,360 feet below the Kelly Bushing on the induction-electrical log of the well cited above.

4. For purposes of identifying the oil shale intervals, an appropriate electrical log shall be run through the oil shale section. One field copy of the log through the oil shale section shall be made available to the division pursuant to R649-3-23 or upon written request by the division.

5. On ~~any~~ well[s] that ~~are~~is intentionally deviated from the vertical within the oil shale section, pursuant to the provisions of R649-3-10 and R649-3-11, a directional survey shall be run from a point at least 20 feet below the oil shale section to the surface and shall thereafter be filed with the division within 20 days after reaching total depth.

6. Any oil shale lessee or operator whose oil shale mine workings reach a distance of 2,640 feet from a producing well or any oil and gas lessee or operator whose producing well is approached by oil shale mine workings within a distance of 2,640 feet shall request agency action with the board. The board may promulgate an order after notice and hearing with respect to the running of a directional survey through

the oil shale section, the cost and potential resource loss liability and responsibility as to the oil and gas operator and the oil shale lessee or operator and any other issues regarding multiple mineral development.

7. The directional survey shall be the confidential property of the parties paying for the survey and shall be kept confidential until released by said parties or the division.

8. In addition to the requirements pertaining to the cementing of casing contained in the R649-3-8, any casing set into or through the oil shale section shall be cemented over the entire oil shale section.

9. If a well is dry, junked or abandoned, a cement plug shall be placed across that portion of the oil shale section extending 200 feet above and 200 feet below the longitudinal center of the Mahogany Zone. The cement plug shall not be required inside a casing cemented in accordance with R649-3-31-8. When the casing is cemented, cement plugs 200 feet in length shall be centered across the top and across the base of the Parachute Creek Member of the Green River Formation.

10. In the event the casing is not cemented in accordance with R649-3-31-8, the division shall approve the method and procedure to prevent the migration of oil, gas, and other substances through the wellbore from one formation to another.

11. The division shall approve the adequacy and location of the cement plugs after examining the appropriate logs and drilling and testing records for the well, to ensure that the oil shale section is adequately protected.

12. Upon written request of the owner or operator under R649-8-6, the division shall keep ~~any~~ well logs confidential. The division may inspect the drilling operations at ~~any~~ time[s], including any mining operations that may affect drilling or producing well bores.

13. Before commencing drilling operations for oil or gas on any land within a designated oil shale area, the operator shall furnish a copy of the APD, together with a plat or map as directed under R649-3-4, to ~~any~~ oil shale owner[s] or their lessees whose interests are within a radius of 2,640 feet of the proposed well. The operator shall furnish a notice of intention to plug and abandon any well in the oil shale area, as required under R649-3-24-1, to the owners or their lessees prior to commencement of plugging operations.

14. The operator shall use generally accepted techniques for vertical or directional drilling as defined under R649-3-10 and R649-3-11 to maintain the well bore within an intact core of a mine pillar. Within 20 days of reaching the total depth or before completion of the well, whichever is the earlier, a directional survey shall be run as prescribed by this rule.

R649-3-32. Incident Reporting.

1. The division shall be notified of major and minor reportable events occurring at any oil or gas drilling, producing, transportation, gathering, or processing facility, or at any injection or disposal facility.

2. Major reportable events include the following:

2.1. Unauthorized release of more than 25 barrels of oil, salt water, oil field chemicals, or oil field wastes.

2.2. Unauthorized flaring, venting, or wasting of:

2.2.1. More than 500 Mcf of gas at any drilling or producing well site, or at any injection or disposal facility; or

2.2.2. More than 1500 Mcf of gas at any transportation, gathering, or processing facility.

2.3. Any fire that consumes the volumes of liquid or gas specified in R649-3-32-2.1 and R649-3-32-2.2.

2.4. Any spill, venting, or fire, regardless of the volume involved, that occurs in a sensitive area, e.g., parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, urban or suburban areas.

2.5. Each accident that involves a fatal injury.

- 2.6. Each blowout, loss of control of a well.
- 2.7. Each release of gas containing 100 or more parts per million of hydrogen sulfide (H₂S) that is not controlled.
3. Notification for ~~all~~any major reportable events will include:
- 3.1. A verbal report submitted to the division as soon as practical but within a maximum of 24 hours after discovery of a reportable event; and
- 3.2. A complete written report of the incident submitted on the Incident Report Form on the division website within five days following the conclusion of a reportable event.
4. Minor reportable events include the following:
- 4.1. Unauthorized release of more than five barrels and up to 25 barrels of oil, salt water, oil field chemicals, or oil field wastes.
- 4.2. Unauthorized flaring, venting or wasting of more than 50 Mcf and up to 500 Mcf of gas at any drilling or producing well site, or at any injection or disposal facility; or
- 4.3. Unauthorized venting or wasting of more than 50 Mcf and up to 1500 Mcf of gas at any transportation, gathering, or processing facility.
- 4.4. Any fire that consumes the volumes of liquid or gas specified in Subsection R649-3-32-4.1 and Subsection R649-3-32-4.2.
- 4.5. Each accident involving a major or life-threatening injury.
5. Notification for ~~all~~any minor reportable events will include a complete written report of the incident submitted on the Incident Report Form on the division website within five days following the conclusion of a reportable event.
6. Complete written reports of major and minor reportable events shall include:
- 6.1. The date and time of occurrence and, if immediate notification was required, the date and time the occurrence was reported to the division.
- 6.2. The location where the incident occurred, described by section, township, range, and county.
- 6.3. The specific nature and cause of the incident.
- 6.4. A description of the resultant damage.
- 6.5. The action taken, the length of time required for control or containment of the incident, and the length of time required for subsequent cleanup.
- 6.6. An estimate of the volumes discharged and the volumes not recovered.
- 6.7. The cause of death if any fatal injuries occurred.
- 6.8. Other information as required by the division's Incident Report Form.

R649-3-33. Drilling Procedures in the Great Salt Lake.

1. For ~~all~~any drilling activities proposed within the Great Salt Lake, the APD required by Subsection R649-3-4 shall be filed at least 30 days prior to the date on which the operator intends to commence operations. As part of the APD, the operator shall include:
- 1.1. The name of the drilling contractor and the number and type of rig to be used.
- 1.2. An illustration of the boundaries of ~~all~~any state or federal parks, wildlife refuges, or waterfowl management areas within one mile of the proposed well location.
- 1.3. An illustration of the locations of ~~all~~any evaporation pits, producing wells, structures, buildings, and platforms within one mile of the proposed well location.
- 1.4. An oil spill emergency contingency plan.
2. Unless permitted by the board after notice and hearing, no well shall be drilled that has a surface location:

- 2.1. Within 1,320 feet from an evaporation pit without the consent of the operator of such pit.
- 2.2. Within one mile from the boundary of a state or federal park, wildlife refuge, or waterfowl management area without the consent of the appropriate state or federal regulatory agency.
- 2.3. Within three miles of Gunnison Island during the Pelican nesting season (March 15 through September 30) or within one mile from said island at any other time.
- 2.4. Within any area south of the Salt Lake Base Meridian Line.
- 2.5. Within any area north of Township 10 North.
- 2.6. Within one mile inside of what would be the water's edge if the water level of the Great Salt Lake were at the elevation of 4,193.3 feet above sea level.
3. Well casing and cementing shall be subject to the following special requirements for the purpose of this rule, the several casing strings in order of normal installation are drive or structural casing, conductor casing, surface casing, intermediate casing, and production casing. ~~All~~Any depths refer to ~~true~~vertical depth:
- 3.1. The drive or structural casing shall be set by drilling, driving or jetting to a minimum depth of 50 feet below the floor of the lake bed or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If drilled in, the drilling fluid shall be a type that will not pollute the lake; in addition, a quantity of cement sufficient to fill the annular space back to the lake floor with returns circulated, must be used.
- 3.2. The conductor casing shall be set at a minimum depth of 200 feet below the floor of the lake, and shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated.
- 3.3. The surface casing shall be set at a minimum depth of 500 feet if the proposed depth of the well is less than 7,000 feet; or 1,000 feet if the proposed depth is over 7,000 feet but less than 11,000 feet; or 1,500 feet if the depth is 11,000 feet. The casing shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated, and the bottom of the casing shall be in competent rock.
- 3.4. The intermediate and production casing shall be set at any time when drilling below the surface casing and hole conditions justify setting casing. This casing will be cemented in such a manner that ~~all~~any hydrocarbons, water aquifers, lost-circulation or zones of significant porosity and permeability, significant beds containing priority minerals, and abnormal pressure intervals are covered or isolated.
- 3.5. Prior to drilling the plug after cementing, ~~all~~any casing strings except the drive or structural casing, shall be pressure tested. This test shall not exceed the rated working pressure of the casing. If the pressure declines more than ten percent in 30 minutes, or if there are other indications of a leak, corrective measures must be taken until a satisfactory test is obtained. ~~All~~Any casing pressure tests shall be recorded on the driller's log.
4. Blowout preventers and related well control equipment shall be installed, and tested in a manner necessary to prevent blowouts and shall be subject to the following special conditions:
- 4.1. Prior to drilling below the surface casing, blowout prevention equipment shall be installed and maintained ready for use until drilling operations are completed.
- 4.2. An inside blowout preventer assembly and a full opening string safety valve in the open position shall be maintained on the rig floor at ~~all~~any time[s] while drilling operations are being conducted.
- 4.2.1. Valves shall be maintained on the rig floor to fit ~~all~~any pipe in the drill string.

NOTICES OF PROPOSED RULES

4.2.2. A top kelly cock shall be installed below the swivel and another at the bottom of the kelly of such design that it can be run through the blowout preventers.

4.3. Before drilling below the surface casing the blowout prevention equipment shall include a minimum of:

4.3.1. Three remotely and manually controlled, hydraulically operated blowout preventers with a rated working pressure that exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams and one hydril type.

4.3.2. A drilling spool with side outlets, if side outlets are not provided in the blowout preventer body.

4.3.3. A choke manifold.

4.3.4. A kill line.

4.3.5. A fill-up line.

4.4. Ram-type blowout preventers and related control equipment shall be tested to the rated working pressure of the stack assembly or to the working pressure of the casing, whichever is the lesser, at the following times:

4.4.1. When installed.

4.4.2. Before drilling out after each string of casing is set.

4.4.3. Not less than once each week while drilling.

4.4.4. Following repairs that require disconnecting a pressure seal in the assembly.

4.5. The hydril-type blowout preventer shall be tested to 70 percent of the pressure testing requirements of ram-type blowout preventers. The hydril-type blowout preventer shall be actuated on the drill pipe once each week.

4.6. Accumulators or accumulators and pumps shall maintain a reserve capacity at ~~any~~ time[s] to provide for repeated operation of hydraulic preventers.

4.7. A blowout prevention drill shall be conducted weekly for each drilling crew to ~~ensure~~ that ~~any~~ equipment is operational and that crews are properly trained to carry out emergency duties. ~~Any~~ blowout preventer tests and crew drills shall be recorded on the driller's log.

5. The characteristics and use of drilling mud and the conduct of related drilling procedures shall be such as are necessary to maintain the well in a safe condition to prevent uncontrolled blowouts of any well. Quantities of mud materials sufficient to insure well control shall be maintained and readily accessible for use at ~~any~~ time[s].

6. Mud testing equipment shall be maintained on the derrick floor at ~~any~~ time[s], and mud tests consistent with good operating practice shall be performed daily, or more frequently as conditions warrant. The following mud system monitoring equipment must be installed, with derrick floor indicators, and used throughout the period of drilling after setting and cementing the surface casing:

6.1. A recording mud pit level indicator including a visual and audio warning device to determine mud pit volume gains and losses.

6.2. A mud return indicator to determine when returns have been obtained, or when they occur unintentionally, and additionally to determine that returns essentially equal the pump discharge rate.

7. In the conduct of ~~any~~ oil and gas operations, the operator shall prevent pollution of the waters of the Great Salt Lake. The operator shall comply with the following pollution prevention requirements:

7.1. Oil in any form, liquid or solid wastes containing oil, shall not be disposed of into the waters of the lake.

7.2. Liquid or solid waste materials containing substances that may be harmful to aquatic life or wildlife, or injurious in any manner to life and property, or that in any way unreasonably adversely affects the chemicals or minerals in the lake shall not be disposed of into the waters of the lake.

7.3. Waste materials, exclusive of cuttings and drilling media, shall be transported to shore for disposal.

8. ~~Any~~ spills or leakage of oil and liquid or solid pollutants shall be immediately reported to the division. A complete written statement of ~~any~~ circumstance[s], including subsequent clean-up operation, shall be forwarded to said agencies within 72 hours of such occurrences.

9. Standby pollution control equipment consistent with the state of the art, shall be maintained by, and shall be immediately available to, each operator.

R649-3-34. Well Site Restoration.

1. The operator of a well shall upon plugging and abandonment of the well restore the well site in accordance with these rules.

2. For ~~any~~ land included in the well site for which the surface is federal, Indian, or state ownership, the operator shall meet the well site restoration requirements of the appropriate surface management agency.

3. For ~~any~~ land included in the well site for which the surface is fee or private ownership, the operator shall meet the well site restoration requirements of the private landowner or the minimum well site restoration requirements established by the division.

4. Well site restoration on lands with fee or private ownership shall be completed within one (1) year following the plugging of a well unless an extension is approved by the division for just and reasonable cause.

5. These rules shall not preclude the opportunity for a private landowner to assume liability for the well as a water well in accordance with Subsection R649-3-24.6.

6. The operator shall make a reasonable effort to establish surface use agreements with the owners of land included in the well site prior to the commencement of the following actions on fee or private surface:

6.1. Drilling a new well.

6.2. Reentering an abandoned well.

6.3. Assuming operatorship of existing wells.

7. Upon application to the division to perform any of the aforementioned and prior to approval of such actions by the division, the operator shall submit an affidavit to the division stating whether appropriate surface use agreements have been established with and approved by the surface landowners of the well site.

8. If necessary and upon request by the division, the operator shall submit a copy of the established surface use agreements to the division.

9. If no surface use agreement can be established, the division shall establish minimum well site restoration requirements for any well located on fee or private surface for the purposes of final bond release.

10. Established surface use agreements may be modified or terminated at any time by mutual consent of the involved parties; however, the operator shall notify the division if such is the case and if a surface use agreement is terminated without a new agreement established, the division shall establish minimum well site reclamation requirements.

11. The operator shall be responsible for meeting the requirements of any surface use agreement, and it shall be assumed by the division until notified otherwise that surface use agreements remain in full force and effect until ~~the~~ requirements of the agreement are satisfied or until the agreement has been terminated by mutual consent of the involved parties.

12. The surface use agreement shall stipulate the minimum well site restoration to be performed by the operator in order to allow final release of the bond.

13. The final bond release by the division shall include a determination by the division whether or not the operator has met the requirements of an established surface use agreement, and the division may suspend final bond release until the operator has completed ~~all~~ the requirements of the surface use agreement.

14. The agreement may state requirements for well site grading, contouring, scarification, reseeding, and abandonment of any equipment or facilities for which the landowner agrees to assume liability.

15. The agreement shall not address operations regulated by the rules and orders of the board such as:

15.1. Disposal of drilling fluid, produced fluid, or other fluid waste associated with the drilling and production of the well.

15.2. Reclamation or treating of waste crude oil.

15.3. Any other operation or condition for which the board has jurisdiction.

16. If the operator cannot establish surface use agreements then the operator shall so notify the division.

17. Within 30 days of the notification or as soon as weather conditions permit, the division shall conduct an inspection and evaluation of the well site in order to establish minimum well site restoration requirements for the purpose of final bond release.

18. The operator shall be given notice by the division of the date and time of the inspection, and if the operator cannot attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

19. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner cannot attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

20. The evaluation shall consider the condition of the land prior to disturbance, the extent of proposed disturbance, the degree of difficulty to conduct complete restoration, the potential for pollution, the requirements for abating pollution, and the possible land use after plugging and restoration are completed.

21. Within 30 days after performing the inspection, the division shall provide the operator with the results of the inspection and the evaluation listing the minimum well site restoration requirements established by the division.

22. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the minimum well site restoration requirements established by the division.

23. If any person disagrees with the results of the inspection and the evaluation and desires a reconsideration of the minimum well site restoration requirements established by the division, such person may submit a request to the board for a hearing and order to modify the requirements.

24. The board, after proper notice and hearing, may issue an order modifying the minimum well site restoration requirements established by the division.

25. The minimum well site restoration requirements established by the division or by board order shall be considered part of any permit granted by the division to conduct operations at a well site, and the inability of the operator to meet such requirements shall be considered grounds for forfeiture of the bond.

26. If the minimum well site restoration requirements suggest to the division that bond coverage for a well should be increased, the division shall take action as stated in R649-3-1.

R649-3-35. Wildcat Wells.

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102(5)(b), an operator must file an application with the division for designation of a wildcat well.

1.1. The application may be filed prior to drilling the well, and a tentative determination of the wildcat designation will be issued at that time. An application or request for final designation of wildcat status as appropriate, must be filed at the time of filing of Form 8, Well Completion or Recompletion Report and Log.

1.2. The application shall contain, where applicable, the following information:

1.2.1. A plat map showing the location of the well in relation to producing wells within a one mile radius of the wellsite.

1.2.2. A statement concerning the producing formation or formations in the wildcat well and also the producing formation or formations of the producing wells in the designated area, including completion reports and other appropriate data.

1.2.3. Stratigraphic cross sections through the producing wells in the designated area and the proposed wildcat well.

1.2.4. A statement as to whether the well is in a known geologic structure. However, whether the well is in a known geologic structure shall not be the sole basis of determining whether the well is a wildcat.

1.2.5. Bottomhole pressures, as applicable, in a wildcat well compared to the wells producing in the designated area from the same zone.

1.2.6. Any other information deemed relevant by the applicant or requested by the division.

2. Information derived from well logs, including certain information in completion reports, stratigraphic cross sections, bottomhole pressure data, and other appropriate data provided in Subsection R649-3-35-1 will be held confidential in accordance with Subsection R649-2-11 at the request of the operator.

3. The division shall review the submitted information and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102(5)(b).

4. The division is responsible for approval of a request for designation of a well as a wildcat well. If the operator disagrees with the decision of the division, the decision maybe appealed to the board. Appeals of ~~all~~ any other tax-related decisions concerning wildcat wells should be made to the State Tax Commission.

R649-3-36. Shut-in and Temporarily Abandoned Wells.

1. Wells may be initially shut-in or temporarily abandoned for a period of twelve (12) consecutive months. If a well is to be shut-in or temporarily abandoned for a period exceeding twelve (12) consecutive months, the operator shall file a Sundry Notice providing the following information:

1.1. Reasons for shut-in or temporarily abandonment of the well,

1.2. The length of time the well is expected to be shut-in or temporarily abandoned, and

1.3. An explanation and supporting data, for showing the well has integrity, meaning that the casing, cement, equipment condition, static fluid level, pressure, existence or absence of Underground Sources of Drinking Water and other factors do not make the well a risk to public health and safety or the environment.

NOTICES OF PROPOSED RULES

2. After review the [D]division will either approve the continued shut-in or temporarily abandoned status or require remedial action to be taken to establish and maintain the well's integrity.

3. After five (5) years of nonactivity or nonproductivity, the well shall be plugged in accordance with Subsection R649-3-24, unless approval for extended shut-in time is given by the [D]division upon a showing of good cause by the operator.

4. If after a five (5) year period the well is ordered plugged by the [D]division, and the operator does not comply, the operator shall forfeit the drilling and reclamation bond and the well shall be properly plugged and abandoned under the direction of the [D]division.

R649-3-37. Enhanced Recovery Project Certification.

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102([7]9), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the [B]board after January 1, 1996:

2.1. As part of the process of certifying incremental production that qualifies for a reduction in the severance tax rate under Subsection 59-5-102([7]9), the operator shall furnish the [D]division:

2.1.1. An extrapolation (projection) and tabulation of expected non-enhanced recovery of oil and gas production from the project.

2.1.2. The projection shall be for not less than seventy-two (72) months commencing with the first month following the project certification by the [B]board.

2.1.3. The projection shall be based on production history of [aH]any well[s] within the project area for not less than twelve [(12)]months immediately preceding either certification or commencement of the project; reservoir and production characteristics; and the application of generally accepted petroleum engineering practices.

2.1.4. The projected production volumes approved by the division shall serve as the base level production for purposes of determining the incremental oil and gas production that qualifies for a reduction in the severance tax rate.

2.2. The operator shall provide a statement as to [aH]any assumptions made in preparing the projection and any other information concerning the project that the division may reasonably require in order to evaluate the operator's projection.

2.3. An operator's request for incremental production certification may be approved administratively by the [D]director or authorized agent. The [D]director or authorized agent shall review the request within 30 days after its receipt and advise the operator of the decision. If the operator disagrees with the [D]director or authorized agent's decision, the operator may request a hearing before the [B]board at its next regularly scheduled hearing. The [D]director or authorized agent may also refer the matter to the [B]board if a decision is in doubt.

2.4. Upon approval of a request for incremental production certification, the [D]director or authorized agent shall forward a copy of the certification to the Utah Tax Commission.

R649-3-38. Surface Owner Protection Act Provisions.

1. These rules and [aH]any subsequent revisions as approved by the board are developed pursuant to the requirements of the Surface Owner Protection Act of 2012 in Title 40, Chapter 6. It is the intent of the board and the division to encourage owners or operators and surface land owners to enter into surface use agreements. Surface use

agreements should fairly consider the respective rights of the owner or operator and the surface land owner and also comply with the requirements of Subsection R649-3-34.

2. For the purposes of Subsection R649-3-38, these definitions are utilized.

2.1. "Crops" means any growing vegetative matter used for an agricultural purpose, including forage for grazing and domesticated animals.

2.2. "Oil and gas operations" means to explore for, develop, or produce oil and gas.

2.3. "Surface land" means privately owned land overlying privately owned oil and gas resources, upon which oil and gas operations are conducted, and owned by a surface land owner.

2.4. "Surface land owner" means a person who owns, in fee simple absolute, [aH]any or part of the surface land as shown by the records of the county where the surface land is located. Surface land owner does not include the surface land owner's lessee, renter, tenant, or other contractually related person.

2.5. "Surface land owner's property" means a surface land owner's surface land, crops on the surface land, and existing improvements on the surface land.

2.6. "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing the use and reclamation of surface land owned by the surface land owner and compensation for damage to the surface land caused by oil and gas operations that result in loss of the surface land owner's crops on the surface land, loss of value of existing improvements owned by the surface land owner on the surface land, and permanent damage to the surface land.

3. Oil and gas operations shall be conducted in such manner as to prevent unreasonable loss of a surface land owner's crops on surface land, unreasonable loss of value of existing improvements owned by a surface land owner on surface land, and unreasonable permanent damage to surface land.

4. In accordance with Section 40-6-20, an owner or operator may enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations and use the surface land to the extent reasonably necessary to conduct oil and gas operations and consistent with allowing the surface land owner the greatest possible use of the surface land owner's property, to the extent that the surface land owner's use does not interfere with the owner's or operator's oil and gas operations.

4.1. Except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall mitigate the effects of accessing the surface land owner's surface land, minimize interference with the surface land owner's use of the surface land owner's property, and compensate a surface land owner for unreasonable loss of a surface land owner's crops on the surface land, unreasonable loss of value to existing improvements owned by a surface land owner on the surface land, and unreasonable permanent damage to the surface land.

4.2. An owner or operator may but is not required to obtain location or spacing exceptions from the division or board or utilize directional or horizontal drilling techniques that are not technologically feasible, economically practicable, or reasonably available.

5. In accordance with Section 40-6-21, non-binding mediation may be requested by a surface land owner and an owner or operator, by providing written notice to the other party, if they are unable to agree on the amount of damages for unreasonable crop loss on the surface land, unreasonable loss of value to existing improvements owned by the surface land owner on the surface land, or unreasonable permanent damage to the surface land.

5.1. A mediator may be mutually selected by a surface land owner and an owner or operator from a listing of qualified mediators maintained by the division and the Utah Department of Agriculture and Food, which includes the mediators identified on the Utah State Courts website with "property" or "real estate" as an area of expertise, or a mediator may be selected from any other source.

5.2. The surface land owner and the owner or operator shall equally share the cost of the mediator's services.

5.3. The mediation provisions of this subsection do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

6. A surface use bond shall be furnished to the division by the owner or operator, in accordance with the following provisions of Subsection R649-3-38-6.

6.1. A surface use bond does not apply to surface land where the surface land owner is a party to, or a successor of a party to:

6.1.1. A lease of the underlying privately owned oil and gas;

6.1.2. A surface use agreement applicable to the surface land owner's surface land; or

6.1.3. A contract, waiver, or release addressing an owner's or operator's use of the surface land owner's surface land.

6.2. The surface use bond shall be in the amount of \$6,000 per well site and shall be conditioned upon the performance by the owner or operator of the duty to protect a surface land owner against unreasonable loss of crops on surface land, unreasonable loss of value of existing improvements, and unreasonable permanent damage to surface land.

6.3. The surface use bond shall be furnished to the division on Form 4S after good faith negotiation and prior to the approval of the application for permit to drill. The mediation process identified in Subsection R649-3-38-5 may commence and is encouraged to be completed.

6.4. The division may accept a surface use bond in the form of a cash account as provided in Subsection R649-3-1-10.2.1 or a certificate of deposit as provided in Subsection R649-3-1-10.2.3. Interest will remain within the account.

6.5. The division may allow the owner or operator, or a subsequent owner or operator, to replace an existing surface use bond with another bond that provides sufficient coverage.

6.6. The surface use bond shall remain in effect by the operator until released by the division.

6.7. The surface use bond shall be payable to the division for the use and benefit of the surface land owner, subject to the provisions of these rules.

6.8. The surface use bond shall be released to the owner or operator after the division receives sufficient information that:

6.8.1. A surface use agreement or other contractual agreement has been reached;

6.8.2. Final resolution of the judicial appeal process for an action for unreasonable damages, as defined in Subsection R649-3-38-6.2, has occurred and have been paid; or

6.8.3. Plugging and abandonment of the well is completed.

6.9. The division shall make a reasonable effort to contact the surface land owner prior to the division's release of the surface use bond.

R649-3-39. Hydraulic Fracturing.

1. Chemical disclosure.

1.1. The amount and type of chemicals used in a hydraulic fracturing operation shall be reported to www.fracfocus.org within 60 days of hydraulic fracturing completion for public disclosure.

2. Wellbore integrity.

2.1. The operator shall comply with Section R649-3-8, Casing Program.

~~[4-]~~2.1.1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

~~[2-]~~2.1.2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and ~~[aH]~~any subsequent strings of casing must be securely anchored.

~~[3-]~~2.1.3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

~~[3-]~~2.1.3.1. Reach a depth below ~~[aH]~~any known or reasonably estimated, utilizable, domestic, fresh water levels.

~~[3-]~~2.1.3.2. Prevent blowouts or uncontrolled flows.

~~[4-]~~2.1.4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

2.2. The operator shall comply with Section R649-3-9, Protection of Upper Productive Strata.

~~[4-]~~2.2.1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until ~~[aH]~~any upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

~~[2-]~~2.2.2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

~~[3-]~~2.2.3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

2.3. The operator shall comply with R649-3-13, Casing Tests.

~~[4-]~~2.3.1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3- 7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

2.4. The operator shall comply with R649-3-6, Drilling Operations.

~~[4-]~~2.4.1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

~~[2-]~~2.4.2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

~~[2-]~~2.4.2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and

NOTICES OF PROPOSED RULES

time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

~~[2-2.]2.4.2.2.~~ The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

~~[2-3.]2.4.2.3.~~ The operator shall notify the division 24 hours in advance of ~~[A#]any~~ testing to be performed on the blowout preventer equipment on a well.

~~[2-4.]2.4.2.4.~~ The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

~~[2-5.]2.4.2.5.~~ The operator shall notify the division 24 hours in advance of ~~[A#]any~~ casing tests performed in accordance with R649-3-13.

~~[2-6.]2.4.2.6.~~ The operator shall report to the division ~~[A#]any~~ fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

2.5. The operator shall comply with R649-3-7, Well Control.

~~[1-]2.5.1.~~ When drilling in wildcat territory, the owner or operator shall take ~~[A#]any~~ reasonably necessary precautions for keeping the well under control at ~~[A#]any~~ time[s] and shall provide, at the time the well is started, proper high pressure fittings and equipment. ~~[A#]Any~~ pressure control equipment shall be maintained in good working condition at ~~[A#]any~~ time[s].

~~[2-]2.5.2.~~ In ~~[A#]any~~ proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. ~~[A#]Any~~ pressure control equipment shall be maintained in good working condition at ~~[A#]any~~ time[s].

~~[3-]2.5.3.~~ Upon installation, ~~[A#]any~~ ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

~~[4-]2.5.4.~~ In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. ~~[A#]Any~~ BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

~~[5-]2.5.5.~~ If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

~~[6-]2.5.6.~~ ~~[A#]Any~~ tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for

examination by the director or an authorized agent during routine inspections.

~~[7-]2.5.7.~~ BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

2.6. The operator shall comply with R649-3-23, Well Workover and Recompletion.

~~[1-]2.6.1.~~ Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

~~[2-]2.6.2.~~ The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

~~[3-]2.6.3.~~ Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

~~[4-]2.6.4.~~ The same tests and reports are required for any well recompletion as are required following an original well completion.

~~[5-]2.6.5.~~ The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

3. Management of flowback water and surface protection.

3.1. The operator shall comply with R649-3-15, Pollution and Surface Damage Control.

~~[1-]3.1.1.~~ The operator shall take ~~[A#]any~~ reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

~~[1-1-]3.1.1.1.~~ The owner or operator shall carry on ~~[A#]any~~ operations and maintain the property at ~~[A#]any~~ time[s] in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

~~[1-2-]3.1.1.2.~~ At a minimum, the owner or operator shall:

~~[1-2-1-]3.1.1.2.1.~~ Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

~~[1-2-2-]3.1.1.2.2.~~ Remove from the property or store in an orderly manner, ~~[A#]any~~ scrap or other materials not in use.

~~[1-2-3-]3.1.1.2.3.~~ Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

~~[1-2-4-]3.1.1.2.4.~~ Maintain tanks in a workmanlike manner that will preclude leakage and provide for ~~[A#]any~~ applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

~~[1-2-4-1-]3.1.1.2.4.1.~~ The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

~~[1-2-5-]3.1.1.2.5.~~ Catch leaks and drips, contain spills, and cleanup promptly.

~~[1-2-6-]3.1.1.2.6.~~ Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

~~[1-2-7-]3.1.1.2.7.~~ Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

~~[1-2-8]~~3.1.1.2.8. In general, good housekeeping practices should be used.

3.2. The operator shall comply with R649-3-16, Reserve Pits and Other On-site Pits.

~~[1-]~~3.2.1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

~~[2-]~~3.2.2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

~~[3-]~~3.2.3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

~~[4-]~~3.2.4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

~~[5-]~~3.2.5. The contents may require treatment to reduce mobility ~~and~~ for toxicity in order to meet cleanup levels.

~~[6-]~~3.2.6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

3.3. The operator shall comply with R649-9-2, General Waste Management.

~~[1-]~~3.3.1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

~~[1-1-]~~3.3.1.1. Before using a commercial disposal facility the operator may contact the Division to verify the status of the facility. The Division regularly updates this information on the Division of Oil, Gas and Mining web site.

~~[1-2-]~~3.3.1.2. Each site ~~and~~ facility used for disposal must be permitted and in good standing with the division.

~~[2-]~~3.3.2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

~~[2-1-]~~3.3.2.1. Recycling should be used whenever possible and practical.

~~[2-2-]~~3.3.2.2. In general, good housekeeping practices shall be used.

~~[2-3-]~~3.3.2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

~~[3-]~~3.3.3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

~~[3-1-]~~3.3.3.1. RCRA exempt waste shall not be mixed with nonexempt waste.

~~[4-]~~3.3.4. Every operator shall file an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes.

~~[4-1-]~~3.3.4.1. If changes are made to the plan during the year, then the operator shall notify the division in writing of this change.

~~[4-2-]~~3.3.4.2. This plan will include the type and estimated annual volume of wastes that will be or have been generated.

~~[4-3-]~~3.3.4.3. The disposal facilities private or to be used for disposal,

~~[4-4-]~~3.3.4.4. The description of any waste reduction or minimization procedures.

~~[4-5-]~~3.3.4.5. Any onsite disposal/treatment methods or programs to be implemented by the operator.

3.4. The operator shall comply with R649-5-1, Requirements for Injection of Fluids Into Reservoirs.

~~[1-]~~3.4.1. Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, the introduction of gas, water or other substances into a reservoir for the purpose of secondary or other enhanced recovery or for storage and the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the board after notice and hearing.

~~[2-]~~3.4.2. A petition for authority for the injection of gas, liquefied petroleum gas, air, water, or any other medium into any formation for any reason, including but not necessarily limited to the establishment of or the expansion of waterflood projects, enhanced recovery projects, and pressure maintenance projects shall contain:

~~[2-1-]~~3.4.2.1. The name and address of the operator of the project.

~~[2-2-]~~3.4.2.2. A plat showing the area involved and identifying ~~[aH]~~any wells, including ~~[aH]~~any proposed injection wells, in the project area and within one-half mile radius of the project area.

~~[2-3-]~~3.4.2.3. A full description of the particular operation for which approval is requested.

~~[2-4-]~~3.4.2.4. A description of the pools from which the identified wells are producing or have produced.

~~[2-5-]~~3.4.2.5. The names, description and depth of the pool or pools to be affected.

~~[2-6-]~~3.4.2.6. A copy of a log of a representative well completed in the pool.

~~[2-7-]~~3.4.2.7. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily.

~~[2-8-]~~3.4.2.8. A list of ~~[aH]~~any operators or owners and surface owners within a one-half mile radius of the proposed project.

~~[2-9-]~~3.4.2.9. An affidavit certifying that said operators or owners and surface owners within a one-half mile radius have been provided a copy of the petition for injection.

~~[2-10-]~~3.4.2.10. Any additional information the board may determine is necessary to adequately review the petition.

~~[3-]~~3.4.3. Applications as required by R649-5-2 for injection wells that are located within the project area, may be submitted for board consideration and approval with the request for authorization of the recovery project.

~~[4-]~~3.4.4. Established recovery projects may be expanded and additional wells placed on injection only upon authority from the board after notice and hearing or by administrative approval.

~~[5-]~~3.4.5. If the proposed injection interval can be classified as an USDW, approval of the project is subject to the requirements of R649-5-4.

3.5. The operator shall comply with R649-5-2, Requirements for Class II Injection Wells Including Water Disposal, Storage and Enhanced Recovery Wells.

~~[1-]~~3.5.1. Injection wells shall be completed, equipped, operated, and maintained in a manner that will prevent pollution and damage to any USDW, or other resources and will confine injected fluids to the interval approved.

~~[2-]~~3.5.2. The application for an injection well shall include a properly completed UIC Form 1 and the following:

~~[2-1-]~~3.5.2.1. A plat showing the location of the injection well, ~~[aH]~~any abandoned or active wells within a one-half mile radius of the proposed well, and the surface owner and the operator of any lands or producing leases, respectively, within a one-half mile radius of the proposed injection well.

~~[2-2-]~~3.5.2.2. Copies of electrical or radioactive logs, including gamma ray logs, for the proposed well run prior to the

NOTICES OF PROPOSED RULES

installation of casing and indicating resistivity, spontaneous potential, caliper, and porosity.

[2-3.]3.5.2.3. A copy of a cement bond or comparable log run for the proposed injection well after casing was set and cemented.

[2-4.]3.5.2.4. Copies of logs already on file with the division should be referenced, but need not be refiled.

[2-5.]3.5.2.5. A description of the casing or proposed casing program of the injection well and of the proposed method for testing the casing before use of the well.

[2-6.]3.5.2.6. A statement as to the type of fluid to be used for injection, its source and estimated amounts to be injected daily.

[2-7.]3.5.2.7. Standard laboratory analyses of:

[2-7.1.]3.5.2.7.1. The fluid to be injected,

[2-7.2.]3.5.2.7.2. The fluid in the formation into which the fluid is being injected, and

[2-7.3.]3.5.2.7.3. The compatibility of the fluids.

[2-8.]3.5.2.8. The proposed average and maximum injection pressures.

[2-9.]3.5.2.9. Evidence and data to support a finding that the proposed injection well will not initiate fractures through the overlying strata or a confining interval that could enable the injected fluid or formation fluid to enter any fresh water strata.

[2-10.]3.5.2.10. Appropriate geological data on the injection interval with confining beds clearly labeled,

[2-10.1.]3.5.2.10.1. Nearby Underground Sources of Drinking Water, including the geologic formation name,

[2-10.2.]3.5.2.10.2. Lithologic descriptions, thicknesses, depths, water quality, and lateral extent;

[2-10.3.]3.5.2.10.3. Information relative to geologic structure near the proposed well that may effect the conveyance [and]or storage of the injected fluids.

[2-11.]3.5.2.11. A review of the mechanical condition of each well within a one-half mile radius of the proposed injection well to assure that no conduit exists that could enable fluids to migrate up or down the wellbore and enter improper intervals.

[2-12.]3.5.2.12. An affidavit certifying that a copy of the application has been provided to [all]any operators, owners, and surface owners within a one-half mile radius of the proposed injection well.

[2-13.]3.5.2.13. Any other additional information that the board or division may determine is necessary to adequately review the application.

[3.]3.5.3. Applications for injection wells that are within a recovery project area will be considered for approval:

[3-1.]3.5.3.1. Pursuant to R649-5-1-3.

[3-2.]3.5.3.2. Subsequent to board approval of a recovery project pursuant to R649-5-1-1.

[4.]3.5.4. Approval of an injection well is subject to the requirements of R649-5-4, if the proposed injection interval can be classified as an USDW.

[5.]3.5.5. In addition to the requirements of this section, the provisions of R649-3-1, R649-3-4, R649-3-24, R649-3-32, and R649-8-1 and R649-10 shall apply to [all]any Class II injection wells.

3.6. The operator shall comply with R649-5-3, Noticing and Approval of Injection Wells.

[4-]3.6.1. Applications for injection wells submitted pursuant to R649-5-1-3 shall be noticed in conformance with the procedural rules of the board as part of the hearing for the recovery project. Any person desiring to object to approval of such an application for an injection well shall file the objection in conformance with the procedural rules of the board.

[2-]3.6.2. The receipt of a complete and technically adequate application, other than an application submitted pursuant to R649-5-3-

1, shall be considered as a request for agency action by the Division and shall be published in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county where the proposed well is located. A copy of the notice of agency action shall also be sent to [all]any parties including government agencies. The notice of agency action shall contain at least the following information:

[2-1-]3.6.2.1. The applicant's name, business address, and telephone number.

[2-2-]3.6.2.2. The location of the proposed well.

[2-3-]3.6.2.3. A description of proposed operation.

[3-]3.6.3. If no written objection to the application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of agency action, or an aquifer exemption is not required in accordance with R649-5-4, and a board hearing is not otherwise required, the application may be considered and approved administratively.

[4-]3.6.4. If a written objection to an application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of application, or if a hearing is required by these rules or deemed advisable by the director, the application shall be set for notice and hearing by the board.

[5-]3.6.5. The director shall have the authority to grant an exception to the hearing requirements of R649-5- 1.1 for conversion to injection of additional wells that constitute a modification or expansion of an authorized project provided that any such well is necessary to develop or maintain thorough and efficient recovery operations for any authorized project and provided that no objection is received pursuant to R649-5-3-3.

[6-]3.6.6. The director shall have authority to grant an exception to the hearing requirements of R649-5-1-1 for water disposal wells provided disposal is into a formation or interval that is not currently nor anticipated to be an underground source of drinking water and provided that no objection is received pursuant to R649-5-3-3.

3.7. The operator shall comply with R649-5-4, Aquifer Exemption.

[4-]3.7.1. The board may, after notice and hearing and subject to the EPA approval, authorize the exemption of certain aquifers from classification as an USDW based upon the following findings:

[4-1-]3.7.1.1. The aquifer does not currently serve as a source of drinking water.

[4-2-]3.7.1.2. The aquifer cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

[4-2-1-]3.7.1.2.1. The aquifer is mineral, hydrocarbon or geothermal energy producing, or it can be demonstrated by the applicant as part of a permit application for a Class II well operation, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible.

[4-2-2-]3.7.1.2.2. The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical.

[4-2-3-]3.7.1.2.3. The aquifer is contaminated to the extent that it would be economically or technologically impractical to render water from the aquifer fit for human consumption.

[4-2-4-]3.7.1.2.4. The aquifer is located above a Class III well mining area subject to subsidence or catastrophic collapse.

[4-3-]3.7.1.3. The total dissolved solids content of the water from the aquifer is more than 3,000 and less than 10,000 mg/l, and the aquifer is not reasonably expected to be used as a source of fresh or potable water.

~~[2-]~~3.7.2. Interested parties desiring to have an aquifer exempted from classification as a USDW, shall submit to the division an application that includes sufficient data to justify the proposal. The division shall consider the application and if appropriate, will advise the applicant to submit a request to the board for an aquifer exemption.

3.8. The operator shall comply with R649-5-5, Testing and Monitoring of Injection Wells.

~~[4-]~~3.8.1. Before operating a new injection well, the casing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 300 psi, whichever is greater.

~~[2-]~~3.8.2. Before operating an existing well newly converted to an injection well, the casing outside the tubing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 1,000 psi, whichever is lesser, provided that each well shall be tested to a minimum pressure of 300 psi.

~~[3-]~~3.8.3. In order to demonstrate continuing mechanical integrity after commencement of injection operations, ~~[at]~~any injection wells shall be pressure tested or monitored as follows:

~~[3-]~~3.8.3.1. Pressure Test. The casing-tubing annulus above the packer shall be pressure tested not less than once each five years to a pressure equal to the maximum authorized injection pressure or to a pressure of 1,000 psi, whichever is lesser, provided that no test pressure shall be less than 300 psi. A report documenting the test results shall be submitted to the division.

~~[3-2-]~~3.8.3.2. Monitoring. If approved by the director, and in lieu of the pressure testing requirement, the operator may monitor the pressure of the casing-tubing annulus monthly during actual injection operations and report the results to the division.

~~[3-3-]~~3.8.3.3. Other test procedures or devices such as tracer surveys, temperature logs or noise logs may be required by the division on a case-by-case basis.

~~[3-4-]~~3.8.3.4. The operator shall sample and analyze the fluids injected in each disposal well or enhanced recovery project at sufficiently frequent time intervals to yield data representative of fluid characteristics, and no less frequently than every year.

~~[3-5-]~~3.8.3.5. The operator shall submit a copy of the fluid analysis to the division with the Annual Fluid Injection Report, UIC Form 4.

3.9. The operator shall comply with R649-5-6, Duration of Approval for Injection Wells.

~~[4-]~~3.9.1. Approvals or orders authorizing injection wells shall be valid for the life of the well, unless revoked by the board for just cause, after notice and hearing.

~~[2-]~~3.9.2. An approval may be administratively amended if:

~~[2-4-]~~3.9.2.1. There is a substantial change of conditions in the injection well operation.

~~[2-2-]~~3.9.2.2. There are substantial changes to the information originally furnished.

~~[2-3-]~~3.9.2.3. Information as to the permitted operation indicates that an USDW is no longer being protected.

R649-3-40. Conflicting Operations on Overlapping Drilling Units.

1. Operators of overlapping drilling units may enter into a written agreement outlining the timing and sequence of drilling and the number and locations of wells if the contractual arrangement will result in the greatest ultimate recovery of oil and gas from each drilling unit, prevent waste, minimize surface impact, and protect correlative rights.

2. The division, upon request of a designated operator, may assist and mediate negotiations to facilitate such an agreement.

3. In the event the designated operators cannot reach agreement, or having entered into such an agreement, a dispute or disagreement on the application of the terms and provisions occur, any

affected designated operator may file a request for agency action with the board for an order establishing delineation of the respective rights and obligations of the designated operators as to each overlapping drilling unit, including the drilling schedule or sequence of drilling, the number, density, and location of authorized wells, or a determination of any other related and relevant matter.

KEY: oil and gas law

Date of Enactment or Last Substantive Amendment: ~~[November 1, 2016]~~2020

Notice of Continuation: August 26, 2016

Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.; 40-6-5; 40-6-20; 40-6-21

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R940-3	Filing No. 52798

Agency Information

1. Department:	Transportation Commission
Agency:	Administration
Room no.:	Administration Suite, 1st Floor
Building:	Calvin Rampton Building
Street address:	4501 S 2700 W
City, state:	Salt Lake City, UT
Mailing address:	PO Box 148455
City, state, zip:	Salt Lake City, UT 84114-8455

Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@utah.gov

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

General Information

2. Rule or section catchline:
R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance
3. Purpose of the new rule or reason for the change:
This rule is repealed and is being reenacted to update the rule and incorporate changes made by 2019 Utah Laws Ch. 479 (S.B. 72) and S.B. 115 passed in the 2020 General Session.

4. Summary of the new rule or change:
 The reenacted rule establishes procedures, standards, and a prioritization process the commission will follow to approve infrastructure loans and requests for infrastructure assistance through the State Infrastructure Bank (SIB) Fund created by Subsection 72-2-202(1). The transportation commission reviewed and voted to approve filing repeal and reenactment of this rule and resulting changes during its May 22, 2020, meeting.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:
 The Department of Transportation (Department) does not anticipate the changes that result from repealing and reenacting this rule will have any effect on the state's budget. The rule being repealed has been in effect in current form since January 12, 2009. The changes in the reenacted rule are structural and intended to align the text to the requirements of the applicable amended statutes.

B) Local governments:
 The Department does not anticipate any changes that result from repealing and reenacting this rule that will have any effect on local governments. The reenacted rule guides the transportation commission and does not require anything of local governments unless they apply for an infrastructure loan or assistance.

C) Small businesses ("small business" means a business employing 1-49 persons):
 The Department does not anticipate any changes that result from repealing and reenacting this rule that will have any effect on small businesses. This rule does not apply to small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
 The Department does not anticipate any changes that result from repealing and reenacting this rule that will have any effect on non-small businesses. This rule does not apply to 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**):
 The Department does not anticipate any changes that result from repealing and reenacting this rule that will have any effect on persons other than small businesses, non-small businesses, state, or local government entities. This rule does not apply to persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:
 There will be no compliance costs associated with the reenacted rule.

G) 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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The reenacted rule will not have a fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M. Braceras, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 72-2-203(2)	Subsection 72-2-202(1)	
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:

	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah State Infrastructure Bank Prioritization Framework
Publisher	Utah Transportation Commission
Date Issued	May 22, 2020
Issue, or version	1.0

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/15/2020
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10. This rule change MAY become effective on:	07/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	05/28/2020
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R940. Transportation Commission, Administration.
~~**R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance.**~~

R940-3-1. Purpose and Authority.

~~This rule is enacted under the provisions of Section 72-2-203. The purpose of this rule is to establish procedures and standards for making loans and assistance through the Transportation Infrastructure Loan Fund.~~

R940-3-2. Definitions.

- ~~(1) "Commission" means the Transportation Commission, which is created in Utah Code Ann. Section 72-1-301;~~
- ~~(2) "Department" means the Utah Department of Transportation, which is created in Utah Code Ann. Section 72-1-201;~~
- ~~(3) "Fund" means the Transportation Infrastructure Loan Fund, which is created in Utah Code Ann. Section 72-2-202;~~
- ~~(4) "Assistance" means infrastructure assistance defined in Utah Code Ann. 72-2-201;~~
- ~~(5) "Loan" means infrastructure loan defined in Utah Code Ann. 72-2-201;~~
- ~~(6) "Transportation project" has the same meaning as defined in Utah Code Ann. 72-2-201;~~
- ~~(7) "Qualified request" means any request submitted by a public entity for assistance or a loan:

 - ~~(a) that has been received and reviewed by the department;~~
 - ~~(b) that has been submitted by the department to the commission for review with a recommendation from the department to accept or reject the request;~~
 - ~~(c) for a transportation project that is on the Statewide Transportation Improvement Program;~~~~
- ~~(8) "Public entity" has the same meaning as defined in Utah Code Ann. 72-2-201.~~

R940-3-3. Commission Responsibilities.

- ~~The commission shall:~~
 - ~~(a) receive and review all qualified requests for assistance or loans through the fund;~~
 - ~~(b) approve assistance or loans provided by the department through the fund;~~
 - ~~(c) approve the terms of assistance or loans, including interest rates and repayment;~~
 - ~~(d) prioritize requests for assistance or loans based on:

 - ~~(i) the availability of monies in the fund;~~
 - ~~(ii) the merits of each qualified request as determined by the commission including, but not limited to, the ability to repay the loan, management of the project, the need for the transportation project and the public benefit.~~~~

R940-3-4. Conditions for Assistance or Loans.

~~The commission shall approve or reject qualified requests submitted by the department during a commission meeting held under 72-1-302, including the terms for repayment. Any subsequent amendments or alterations made to the terms for repayment must be approved by the commission. Repayment of loans must be completed no more than 10 years from the time the loan is executed. If a transportation project is funded with federal funds, all federal regulations must be followed.]~~

R940-3. State Infrastructure Bank Fund, Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance.

R940-3-1. Authority and Purpose.

- ~~(1) Authority to make this rule is by Utah Code Subsection 72-2-203(2).~~
- ~~(2) The purpose of this rule is to establish procedures, standards, and a prioritization process the commission will follow to~~

NOTICES OF PROPOSED RULES

approve infrastructure loans and infrastructure assistance through the State Infrastructure Bank Fund created by Subsection 72-2-202(1) ("SIB").

R940-3-2. Definitions.

(1) The definitions stated in Section 72-2-201 define the same words as used in this rule.

(2) In addition:

(a) "Commission" means Transportation Commission created by Section 72-1-301.

(b) "Department" means Department of Transportation created by Section 72-1-201.

(c) "Public entity" means as the phrase is defined by Section 72-2-201. A public entity is eligible to receive an infrastructure loan or assistance funded by the SIB.

(d) "Transportation project" means as the phrase is defined by Section 72-2-201. A transportation project is eligible for funding by an infrastructure loan or assistance from the SIB.

R940-3-3. Procedures and Standards for an Infrastructure Loan or Assistance from the SIB.

(1) Procedures.

(a) A public entity must request an infrastructure loan or infrastructure assistance using an application form provided by the department.

(b) The public entity must complete and submit the application completed according to the application instructions.

(c) The public entity must state clearly if it is applying for a loan or assistance as defined by Subsections 72-2-201(3) or (2) respectively.

(d) The application form with instructions is available on the department's website at udot.utah.gov/go/SIB.

(2) Standards.

(a) A loan from the SIB fund must bear interest at or above the market interest rate available to the state.

(b) The interest rate for an infrastructure loan will be determined by adding 0.5% to the rate for AAA Municipal General Obligation Bonds obtained from the state treasurer as of the date of the completed application.

(c) The public entity must begin repaying the infrastructure loan no later than the completion date of the project or the date the public entity opens the facility to traffic in the case of a highway project. Interest will accrue during the period between loan closing and the agreed upon estimated project completion date, and will be capitalized and added to the principal balance of the loan.

(d) The repayment period for an infrastructure loan may not exceed the term identified in Title 72, Chapter 2, Part 2.

(e) Loan documents must indicate the execution date and repayment deadline date for the loan.

(f) The public entity may pledge all or a portion of a revenue source controlled by the public entity to the repayment of the loan.

(g) The public entity must repay loans in monthly, quarterly, or yearly installments.

(h) If the assistance or loan is not fully executed within 180 days of the date the application is approved by the commission the application will expire unless the public entity requests, and the commission approves continuation of the terms. Continuations will be limited to a maximum of 180 days each.

R940-3-4. Prioritizing Requests for an Infrastructure Loan, or Infrastructure Assistance.

(1) Criteria. The commission will follow a prioritization framework that may include the following criteria to evaluate and prioritize requests for a loan or assistance:

(a) Availability of money in the fund;

(b) evidence the project will encourage, enhance, or create economic benefits to the state or political subdivision;

(c) likelihood a loan or assistance will enable the project to proceed at an earlier date than would otherwise be possible;

(d) the extent to which assistance will foster innovative public-private partnerships and attract private investment;

(e) the project demonstrates that it provides a benefit to the state highway system, including safety or mobility improvements;

(f) the amount of proposed assistance as a percentage of the overall project costs with emphasis on local and private participation;

(g) the extent to which the project provides intermodal connectivity with public transportation, pedestrian, or nonmotorized transportation facilities; or

(h) other provisions the commission considers appropriate.

(2) Scoring. The commission will apply a framework to determine the score it assigns to qualified projects for prioritization purposes. This framework is located on the department's website at this address: udot.utah.gov/go/SIB and is incorporated by reference.

R940-3-5. Commission Discretion.

The commission may approve a request for a loan or assistance ahead of another request with a higher prioritization score for good cause as determined by the commission during a public meeting.

KEY: State Infrastructure Bank Fund, SIB loan, SIB assistance, SIB[~~infrastructure assistance~~, Transportation Infrastructure Loan Fund]

Date of Enactment or Last Substantive Amendment: [~~January 12, 2009~~2020]

Notice of Continuation: December 14, 2018

Authorizing, and Implemented or Interpreted Law: 72-2-203

End of the Notices of Proposed Rules Section

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 July 15, 2020.

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 October 13, 2020, 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.):	R68-33	Filing No. 52625

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state, 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	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:		
R68-33. Industrial Hemp Retailer Permit		
3. Change in Proposed Rule:		
Changes FILING Name, Publication date of prior filing:	FILING	Industrial Hemp Retailer Permit, Filing No. 52625, Published 04/15/2020
4. Reason for this change:		
The change is necessary to require retailers to obtain a permit for each individual retail location.		
5. Summary of this change:		
The change requires retailers to obtain a permit for each individual retail location rather than operating multiple locations under one permit. The Department of Agriculture and Food (Department) has also decreased the proposed permit fee to \$50 from \$200. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the April 15, 2020, issue of the Utah State Bulletin, on page 23. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been		

deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

6. Aggregate anticipated cost or savings to:
A) State budget:
The Department has proposed changing the proposed fee for a retail permit from \$200 to \$50 because additional permits will be required for each retail location. The Department estimates that with this change, 10,000 individuals will apply for a permit, bringing in \$500,000 to the department. The cost to the Department to administer the program should be equal to the amount of money generated for the number of permittees, and is \$500,000. The regulatory impact table reflects a cost and benefit of \$700,000 because that is the difference between the originally estimated cost of \$1,200,000 and the cost under the change and the originally estimated benefit of \$1,200,000 and estimated benefit under the change.
B) Local government:
The Department does not anticipate that there would be costs or savings to local governments because they do not regulate or act as industrial hemp retailers.
C) Small businesses ("small business" means a business employing 1-49 persons):
The cost to small businesses that operate as industrial hemp retailers would equal the permit cost of \$50 per small businesses retail location. The Department anticipates that approximately 10,000 retailers will apply for a permit. It is difficult to determine how many of these will be small businesses and how many will be non-small businesses because a variety of different types of businesses act as industrial hemp retailers. For the purposes of the regulatory impact summary table, the Department has estimated that 75% of retailers will be small businesses and 25% will be non-small businesses. The benefit to the businesses is difficult to quantify but would be that they are able to sell products that are safe and compliant with the law that consumers will be more willing to purchase. The regularly impact table reflects the difference between the original cost to small businesses of \$900,000 and the cost under the change of \$375,000.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The cost to non-small businesses that operate as industrial hemp retailers would equal the permit cost of \$50 per businesses. The Department anticipates that approximately 10,000 retailers will apply for a permit for a total cost of \$500,000. It is difficult to determine how many of these will be small businesses and how many will be

non-small businesses because a variety of different types of businesses act as industrial hemp retailers. For the purposes of the regulatory impact summary table, the Department has estimated that 75% of retailers will be small businesses and 25% will be non-small businesses. The benefit to the businesses is difficult to quantify but would be that they are able to sell products that are safe and compliant with the law that consumers will be more willing to purchase. The regulatory impact table reflects the difference between the original cost to small businesses of \$300,000 and the \$125,000 cost under the change.

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**):

The Department does not anticipate quantifiable costs or savings to other persons who do not operate as industrial hemp retailers.

F) Compliance costs for affected persons:

The compliance costs for affected persons would be the cost of an industrial hemp retailer permit, which is proposed to be \$50 per permit for each retail location.

G) 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	FY2021	FY2022	FY2023
State Government	\$700,000	\$700,000	\$700,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$525,000	\$525,000	\$525,000
Non-Small Businesses	\$175,000	\$175,000	\$175,000
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$1,400,000	\$1,400,000	\$1,400,000
Fiscal Benefits			
State Government	\$(700,000)	\$(700,000)	\$(700,000)
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$(700,000)	\$(700,000)	\$(700,000)
Net Fiscal Benefits	\$700,000	\$700,000	\$700,000

H) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves this fiscal analysis.

7. A) Comments by the department head on the fiscal impact the rule may have on businesses:

While industrial hemp retailers will need to pay a fee to obtain a permit, the permitting fee will cover the cost required for the Department to employ inspectors and manage the retail permit program. This rule change allows for the Department to permit industrial hemp retailers and ensure that products that are sold to consumers are safe and compliant with state law.

B) Name and title of department head commenting on the fiscal impacts:

R. Logan Wilde, Commissioner

Citation Information

8. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 4-41-103.3	Subsection 4-2-103(1)(i)	
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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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/15/2020

11. This rule change MAY become effective on:	07/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	05/20/2020
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R68. Agriculture and Food, Plant Industry.

R68-33. Industrial Hemp Retailer Permit.

R68-33-1. Authority and Purpose.

1) Pursuant to Subsections 4-41-103.3 and 4-2-103(1)(i), this rule establishes the requirements for a person seeking an industrial hemp retailer permit.

R68-33-2. Definitions.

- 1) "Department" means the Utah Department of Agriculture and Food.
- 2) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.
- 3) "Industrial hemp retailer permit" means a permit that the department issues to a retailer who sells or markets any industrial hemp product.
- 4) "Industrial hemp product" means product derived from or made by processing industrial hemp plants or plant parts.
- 5) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.
- 6) "Premises" means a place where an industrial hemp product is sold, offered for sale, exposed for sale, stored, or marketed.

R68-33-3. Industrial Hemp Retailer Permit.

- 1) A person who sells, offers for sale, exposes for sale, or markets an industrial hemp product in the state shall secure an industrial hemp retailer permit from the department.
- 2) A permit shall be obtained before an industrial hemp product is offered for sale in Utah.
- 3) A person seeking an industrial hemp retailer permit shall provide to the department:
 - a) the name of the person who sells, offers for sale, or markets an industrial hemp product;
 - b) the address of each location where the industrial hemp product is sold, offer for sale, or marketed; and
 - c) written consent allowing a representative of the department to enter all premises where the person is selling industrial hemp product.
- 4) ~~[A retailer shall ensure that any location is registered under the permit application. One permit for multiple locations or outlets of stores falling under the same LLC will be accepted, provided each location or outlet is identified.]~~ A retailer shall obtain a permit for each

individual store or retail establishment location where industrial hemp products are sold.

- 5) A permit fee, as set forth in the fee schedule approved by the legislature, shall be paid to the department with the submission of the application.
- 6) The department may deny a permit for an incomplete application.
- 7) A permit is renewable for up to a one-year period with an annual renewal fee that shall be paid on or before December 31st of each year.
- 8) A late fee shall be assessed for a renewal of an industrial hemp retailer permit submitted after December 31st and shall be paid before the renewal is issued.

R68-33-4. Inspection and Testing.

- 1) The department shall randomly inspect a retailer permittee to ensure industrial hemp product distributed or available for distribution in Utah is in compliance with this rule and Rule R68-26.
- 2) The department shall periodically sample, analyze, and test industrial hemp product distributed within the state for compliance with registration and labeling requirements, and the certificate of analysis, if applicable.
- 3) The department may inspect industrial hemp product distributed or available for distribution for any other reason the department deems necessary.
- 4) The sample taken by the department shall be the official sample.
- 5) Pursuant to Section 4-1-105, the department may take samples at no charge to the department.

R68-33-5. Retailer Permittee Responsibilities.

- 1) A retailer shall:
 - a) ensure that an advertisement for industrial hemp product sold or marketed in Utah does not contain any medical claim unless the product has been issued a National Drug Code by the FDA; and
 - b) ensure that an industrial hemp product sold is properly registered with the department.
- 2) A retailer shall provide the identity of the manufacturer of an industrial hemp product sold upon request of the department.
- 3) A retailer may register the product in lieu of the manufacturer if the product is not registered.
- 4) A retailer shall ensure that each location is permitted.

R68-33-6. Violation.

- 1) Industrial hemp product shall be considered falsely advertised if the permittee makes a claim about a product that is not on the label.
- 2) It is a violation to:
 - a) market or sell industrial hemp product in the state of Utah without an industrial hemp retail permit;
 - b) distribute, market, or sell industrial hemp product that is not registered with the department;
 - c) distribute or market a product that contains greater than 0.3% THC;
 - d) distribute or market an industrial hemp product containing a cannabinoid that is not in a medicinal dosage form;
 - e) market or sell industrial hemp products without a valid retailer permit; or

f) refuse inspection of a retail establishment, product for sale, or a product storage area.

KEY: industrial hemp, retailer permit
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(i); 4-41-103.3

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R70-580	Filing No. 52663

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Street address:	350 N Redwood Road	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:		
R70-580. Kratom Product Registration and Labeling		
3. Change in Proposed Rule:		
Changes FILING Name, Publication date of prior filing:	FILING	Kratom Product Registration and Labeling, Filing No. 52663, Published 05/01/2020
4. Reason for this change:		
These changes were made based on industry feedback to lessen testing requirements slightly and add certification requirements to maintain the integrity of the kratom program. Changes have also been made to add clarity to the rule.		
5. Summary of this change:		

The rule has been changed to add certification and recordkeeping requirements for kratom product registration. It also removes requirements for synthetic testing and USP impurity testing. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the May 1, 2020, issue of the Utah State Bulletin, on page 16. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

6. Aggregate anticipated cost or savings to:
A) State budget:
The changes do not affect the cost to the state for the Department of Agriculture and Food (Department) to administer the kratom program nor does it change the fees collected by the Department.
B) Local government:
The changes do not create any costs or savings for local governments because they do not regulate kratom or act as kratom processors.
C) Small businesses ("small business" means a business employing 1-49 persons):
The changes do not create new costs or savings to small businesses because the fees charged by the Department remain the same.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The changes do not create new costs or savings to non-small businesses because the fees charged by the Department remains the same.
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):
The changes do not affect any other individuals because they do not act as kratom processors in the .
F) Compliance costs for affected persons:
The changes do not affect compliance costs for affected persons because the fees charged by the Department have not changed.
G) Regulatory Impact Summary Table (This table only

NOTICES OF CHANGES IN PROPOSED RULES

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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves this fiscal analysis.

7. A) Comments by the department head on the fiscal impact the rule may have on businesses:

These rule changes will allow for improved administration of the kratom program but will not have any fiscal impact on business.

B) Name and title of department head commenting on the fiscal impacts:

R. Logan Wilde, Commissioner

Citation Information

8. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 4-45-107

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/15/2020

11. This rule change MAY become effective on: 07/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title: R. Logan Wilde, Commissioner **Date:** 06/01/2020

R70. Agriculture and Food, Regulatory Services.

R70-580. Kratom Product Registration and Labeling.

R70-580-1. Authority and Purpose.

Pursuant to Section 4-45-107, this rule establishes the requirements for labeling and registration of products made from and containing kratom.

R70-580-2. Definitions.

1) "Certificate of Analysis (COA)" means a certificate from a third-party laboratory describing the results of the laboratory's testing of a sample.

2) "End Consumer" means an individual who does not resell the purchased kratom product.

3) "Food" means a raw, cooked, or processed edible substance, ice, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

4) "Label" means the display of all written, printed, or graphic matter upon the immediate container of a kratom product or

a statement by the kratom processor directly related to and accompanying the kratom product bearing the label.

5) "Third-party Laboratory" means a laboratory that has no direct interest in a processor of kratom product that is capable of performing mandated testing utilizing validated methods.

6) "Approved Kratom Delivery Form" means a kratom product in raw leaf, capsule, tablet, powder, liquid tincture, tea bag, concentrated, or extract forms. Any form that is combustible or intended to be used for vaporization is not an approved kratom delivery form. Any form that is intended to be added to food is not an approved kratom delivery form.

7) "Kratom Type" means the specified strain of *Mitragyna speciosa*.

8) "Kratom Processor" means any kratom product manufacturer, distributor, or retailer who offers a kratom product for sale or resale to consumers in the state.

9) "Kratom Product" means a product manufactured or processed from kratom raw materials acquired by a kratom processor that is certified to be compliant with provisions of Title 4, Chapter 4, U.C.A., the Kratom Consumer Protection Act.

10) "Kratom Retailer" means a kratom processor who sells a kratom product to an end consumer.

R70-580-3. Product Registration.

1) A kratom product distributed or available for distribution that is intended to be offered for sale to an end consumer[s] in Utah, including on internet or social media platforms, shall be:

- a) in an approved kratom delivery form; and
- b) registered with the department annually by the kratom processor.

2) A product that contains the same kratom ingredients in the same kratom delivery form but a different container, package, or volume shall be included in a single registration.

3) Application for registration shall be made on a form provided by the department that includes the following information:

- a) the name and address of the kratom processor and the name and address of the person whose name will appear on the label, if other than the kratom processor;
- b) the name of the kratom product included in the registration;
- c) the kratom type and recommended usage, including directions for use or serving size for the kratom product;
- d) the approved kratom delivery form;
- e) the weights or volumes, as appropriate, of the package of kratom product offered for sale for the recommended usage and for the entire package;
- f) a complete copy of the label that will appear on the kratom product or the document that can be reached via scannable bar code, QR code or web address, pursuant to Subsection R70-580-6 (7);~~and~~

g) a certificate of analysis for the kratom product from a third-party laboratory that shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation[-];

h) ~~[A]~~a third-party laboratory may test kratom product prior to obtaining ISO 17025:2017 accreditation provided the third-party laboratory:

- i) adopts and follows minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and

Compliance Monitoring published by the Organization for Economic Co-operation and Development; and

ii) becomes ISO 17025:2017 accredited within 18 months[-];

i) ~~[I]~~if a kratom processor uses an out-of-state laboratory they shall include a copy of the laboratory accreditation with the registration[-];

j) certification that:
i) the kratom manufacturer has not added any substance to the kratom product that is listed in Title 58, Chapter 37, U.C.A., the Utah Controlled Substances Act;

ii) the kratom manufacturer has not mixed or packed any nonkratom substance that affects the quality or strength of the kratom product to such a degree as to render the kratom product injurious to a consumer;

iii) the kratom product manufacturer has not added any synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the kratom plant;

iv) the registrant assumes full responsibility and liability for the product; and

v) that the registered kratom product is compliant with current state and federal guidelines for food safety.

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

5) A separate registration fee shall be required for each kratom product manufactured or processed from raw materials with the same specifications, same name, and same kratom delivery form.

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

7) The department shall deny or withdraw registration for a kratom product that:

- a) violates Title 4, Chapter 4, U.C.A., the Kratom Consumer Protection Act;
- b) is adulterated with foreign materials that would be injurious to a consumer;
- c) makes a material change in the alkaloid content of the kratom product; or
- d) if there is any reasonable basis to suspect that the kratom product is unsafe or that ingredients violate state law or rules.

8) A new registration application is required for the following:

- a) a change in the kratom product ingredients or processes that materially alters the product;
- b) a change to the recommended usage; and
- c) a change of name for the product.

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

10) The kratom processor registering the kratom product is responsible for the accuracy and completeness of the information submitted.

11) A registration is renewable for up to a one-year period with an annual renewal fee per kratom product that shall be paid on or before June 30th of each year.

12) A kratom product that has been discontinued shall continue to be registered in Utah until the kratom product is no longer available for distribution.

NOTICES OF CHANGES IN PROPOSED RULES

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

R70-580-4. Establishment Registration.

1) Pursuant to Subsection 4-45-104(5), a kratom processor shall register as a food establishment under Section 4-5-301.

2) A kratom processor may be registered in another state that meets or exceeds the requirements in Section 4-5-301, if they provide the department with a copy of the registration from the federal or state regulatory agency.

3) A kratom processor shall be subject to all statutes, rules, regulations, policies, and procedures for food establishments specific to the form of the kratom product offered for sale in Utah.

~~4) A kratom processor shall not have more than one DBA.~~

~~5) The application for registration shall include a certification that the kratom processor maintains a master manufacturing record (MMR) that documents:~~

- ~~a) batch-to-batch uniformity;~~
- ~~b) that each batch conforms to kratom raw material specifications;~~
- ~~c) that each batch record shows that each step of the MMR was performed;~~
- ~~d) that the product processes, controls, and tests ensure reliable, reproducible results; and~~
- ~~e) that the finished kratom product meets each specification before the product is released for distribution.~~

~~5) MMR testing shall be performed on finished kratom product as identified by lot or batch number.~~

~~6) Each MMR shall also include the following information:~~

- ~~a) the lot or batch identification number of the tested product;~~
- ~~b) the date received;~~
- ~~c) the date of testing completion;~~
- ~~d) the method of analysis for each test conducted;~~
- ~~e) a photo of the kratom product that was tested;~~
- ~~f) the name and address of the kratom processor that manufactured the product; and~~
- ~~g) the name and address where the MMR records are maintained and available for inspection by the department.~~

R70-580-5. Certificate of Analysis.

1) At a minimum, the certificate of analysis for ~~[#]~~each batch of kratom product shall include the following test results:

a) the contents of mitragynine and 7-hydroxymitragynine in the kratom product certifying compliance with Section R70-580-5;

~~[b) synthetic alkaloid content, including synthetic mitragynine, synthetic hydroxymitragynine, or any other synthetically derived compound of the kratom plant;~~

~~c) results of a full panel of testing consistent with the U.S. Pharmacopeia standard 561, Articles of Botanical Origin, and 232, Elements of Impurities, as of April 2020, which are hereby incorporated by reference;]~~

~~[d]b) at a minimum, test results that indicate:~~

~~i) that the kratom product tests as absent, negative, undetected, non-detected, or <1.0 cfu/g for pathogens Salmonella and E. Coli;~~

~~ii) that the kratom product tests as absent, negative, undetected, non-detected, or < 1.0 ppm for heavy metals Lead and Arsenic;~~

~~iii) that the kratom product tests as absent, negative, undetected, non-detected or <0.41 ppm for heavy metal Cadmium; and~~

~~iv) that the kratom product tests as absent, negative, undetected, non-detected, or <0.3 ppm for heavy metal Mercury;~~

~~[d]c) testing that indicates that the kratom product does not contain[:~~

~~—i) cannabis, spice, cocaine, alcohol, fentanyl, caffeine, or benzodiazepines[; and].~~

~~[—e) certification that the manufacturer has not added any substance to the kratom product that is listed in Title 58, Chapter 37, U.C.A., the Utah Controlled Substances Act.~~

~~2) The certificate of analysis shall show that the registered kratom product is compliant with current state and federal guidelines for food safety.]~~

~~[3]2) Testing shall be performed on finished kratom product as identified by lot or batch number.~~

~~[4]3) The certificate of analysis shall also include the following information:~~

- ~~a) the lot or batch identification number of the tested product;~~
- ~~b) the date received;~~
- ~~c) the date of testing completion;~~
- ~~d) the method of analysis for each test conducted;~~
- ~~e) a photo of the kratom product that was tested;~~
- ~~f) the name and address of the kratom processor that manufactured the product; and~~
- ~~g) the name and address of the laboratory that completed the testing.~~

~~[5]4) The lot or batch number on the certificate of analysis shall match the lot or batch number on the kratom product and shall be conspicuously placed on the container or label of the kratom product.~~

~~[6]5) Upon receipt of an adverse or non-compliant test result, the kratom processor shall be required to produce a new certificate of analysis from an independent third-party laboratory on the reported product to affirm compliance.~~

~~[7]6) Failure to submit a new certificate of analysis shall be cause for withdrawal or denial of a product registration.~~

~~7) Mycotoxin testing of a kratom product may be required if the department has reason to believe that mycotoxins may be present.~~

R70-580-6. Label Requirements.

1) A kratom product shall be labeled pursuant to 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 101.9(j)(13), 21 CFR 101.9(j)(17), 21 CFR 101.15, and 21 CFR 101.36.

2) The label shall contain the factual basis upon which the kratom processor represents the product as a kratom product.

3) The label shall identify kratom product by batch or lot number for each container that shall match the batch and lot number on the certificate of analysis.

4) A kratom product shall not contain claims that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease on the label.

5) Each kratom product label, if the product is intended to be sold as a dietary supplement, shall include the following text pursuant to 21 CFR 101.93 (c), 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.

6) A kratom product shall meet the standards in 21 U.S.C. 9, the Food Drug and Cosmetic Act, other applicable federal laws and regulations, and all applicable state laws and regulations relating to the labeling of food and cosmetics.

7) If there is not sufficient room on the kratom product label, the kratom product shall display on the label a scannable bar code, QR code, or web address linked to a document containing the information required in Sections (1) through (6).

8) No other information, illustration, or depiction shall appear on the label.

R70-580-7. Product Appearance and Flavor.

1) A kratom processor may not produce a kratom product that is designed to mimic a candy product.

2) A kratom processor 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 kratom processor may not shape a kratom product in any way that appeals to children.

4) A kratom product shall be packaged in child-resistant packaging, pursuant to 16 CFR 1700.

R70-580-8. Inspection and Testing.

1) The department shall conduct randomized inspection of the kratom product distributed or available for distribution in the state for compliance with this rule.

2) The department shall periodically sample, analyze, and test a kratom product distributed within Utah for compliance with registration and labeling requirements and the certificate of analysis.

3) The department may conduct inspection of any kratom product distributed or available for distribution if there is any reasonable basis to suspect that the kratom product is unsafe or that ingredients violate state law or rules.

4) The test results from the department inspection samples shall be the official sample results.

5) Upon request, a kratom processor shall provide documentation certifying that any batch of kratom raw materials acquired pursuant to a compliant specification purchase that is used to process or manufacture a kratom product is compliant with Section R70-580-5.

R70-580-9. Retailer Responsibilities.

- 1) A retailer shall:
 - a) ensure that kratom product is labeled correctly; and

b) ensure that kratom product offered for sale is properly registered with the department.

2) A retailer shall provide the identity of the processor of a kratom product sold by the retailer upon request of the department.

3) A retailer shall register a kratom product in lieu of the kratom processor if the product is not registered.

R70-580-10. Violation.

1) Each improperly labeled kratom product shall be a separate violation of this rule.

2) A kratom product shall be considered misbranded if it does not meet the labeling requirements of this rule.

3) A kratom product shall be considered adulterated if it is found to contain pathogenic microorganisms, mold, or fungus.

~~[3]4~~ It is a violation to distribute or market a kratom product that is not registered with the department.

~~[4]5~~ Each unit manufactured or processed from a batch of raw material or on a single retail invoice shall be considered a separate violation of this rule for an unregistered product marketed for sale.

~~[5]6~~ It is a violation:

a) to prepare, distribute, sell, or offer for sale a kratom product that violates Subsection 4-45-104 (1);

b) to prepare, distribute, sell, or offer for sale a kratom product that is not in an approved kratom delivery form, including adding or processing kratom into another form of food;

c) to prepare, distribute, sell, or offer for sale a kratom product that would be potentially harmful to consumers;

d) for a kratom processor to fail to register as a food establishment pursuant to Section 4-5-301 or Subsection R70-580-4(2);

e) for a kratom processor to distribute, sell, or offer for sale a kratom product to an individual under 18 years of age; and

f) for a kratom processor to improperly sample, test, falsify a certificate of analysis, or knowingly submits a falsified certificate of analysis for a kratom product.

R70-580-11. Penalties.

Any violation of or failure to comply with any provision of this rule or any specific requirements, may be grounds for issuance of citations, fines, revocation of registration, or denial of future registration pursuant to Section 4-2-303 and 4-2-304.

**KEY: kratom, kratom product registration, kratom processor
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 4-45-107**

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.):	R414-42	Filing No. 52797

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W, Salt Lake City	
Mailing address:	PO Box 143102	
City, state, 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:
R414-42. Telemedicine

3. Effective Date:
05/27/2020
4. Purpose of the new rule or reason for the change:
The purpose of this change is to allow easier access to Medicaid services during the Coronavirus (COVID-19) Pandemic.
5. Summary of the new rule or change:
This amendment provides members easier access to services through teledentistry, synchronous telehealth, and asynchronous telehealth. It further specifies that coverage for telehealth is the same as coverage for any given service, includes new definitions, and makes other technical changes.
6. Regular rulemaking would:
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.
Specific reason and justification:
This emergency rule is necessary to provide Medicaid members access to services during the COVID-19

Pandemic.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

There is an estimated total cost of \$78,900 through statewide utilization and reimbursement of the originating telehealth site.

B) Local governments:

There is no impact on local governments because they neither fund nor provide telehealth under the Medicaid program.

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

Small businesses may see a share of revenue through statewide utilization based on the total amount of \$78,900.

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**):

Medicaid providers may see a share of revenue through statewide utilization based on the total amount of \$78,900. Medicaid members, however, will not see a fiscal impact as their services will remain the same even with the change in venue.

8. Compliance costs for affected persons:

There are no compliance costs to a single Medicaid member because services will remain the same even with the change in venue.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Businesses may see a share of revenue through their use of the new telehealth services.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 26-1-5	Section 26-18-3	Section 26-18-13
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Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	Date:	05/27/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-42. Tele[medicine]health.

R414-42-1. Introduction and Authority.

This rule outlines [eligibility,]access requirements, coverage, limitations, and reimbursement for telehealth services[telemedicine]. This rule is authorized by Section 26-18-13.

R414-42-2. Definitions.

(1) "Tele[medicine]health services" means the transmission of health-related services or information through the use of electronic communication or information technology[is two-way, real-time interactive communication between the member and the physician or authorized provider at the distant site. This electronic communication uses interactive telecommunications equipment that includes, at a minimum, audio and video equipment].

[(2) "Authorized provider" means a provider in compliance with requirements as specified in Section 1: General Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

[(3) "Distant site" is the location of the provider when delivering the service via the telecommunications system.]

(2) "Teledentistry" means the use of information technology and telecommunications for dental care, consultation, and education.

[(4) "Originating site" is the location of the Medicaid member at the time the service is furnished via a telecommunications system.]

([5]3) "Telepsychiatric consultation" means a consultation between a [physician]licensed provider and a board-certified psychiatrist that utilizes:

(a) the health records of the [patient]member, provided from the [patient]member or the referring [physician]provider; and

(b) a written, evidence-based [patient]member questionnaire.

(4) "Authorized provider" means a provider in compliance with requirements as specified in Section 1: General Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

(5) "Distant site" means the physical location of a licensed provider that delivers health care services via a telecommunication system or where the asynchronous service originates.

(6) "Originating site" means the physical location of a member at the time the service is being furnished via a telecommunication system or where the asynchronous service originates.

(7) "Synchronous interaction" means real-time communication through interactive technology that enables a provider at a distant site and a member at an originating site to interact simultaneously through two-way audio or video transmission.

(8) "Asynchronous store and forward transfer" means the transmission of a member's health care information from an originating site to a provider at a distant site.

R414-42-3. Covered Services.

[Covered services may be delivered by means of telemedicine]A licensed provider may deliver services via synchronous or asynchronous telehealth, as clinically appropriate. Services include consultation services, evaluation and management services,

telemedicine services, mental health services, substance use disorder services, and telepsychiatric consultations.

R414-42-4. Limitations.

(1) Tele~~[medicine]~~health services ~~[encounters]~~ must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, ~~[as amended]~~ to ensure that all patient communications and records, including recordings of tele~~[medicine]~~health encounters, are secure and remain confidential. The provider is responsible to ensure the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) A provider must comply~~[Compliance]~~ with the Utah Health Information Network (UHIN) standards for telehealth~~[must be maintained]~~. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) ~~[The originating site receives no reimbursement for the use of telemedicine.]~~ Medicaid does not cover services via telehealth which are not otherwise covered.

R414-42-5. Reimbursement of Services.

The Department pays the lesser of the amount billed or the rate on the fee schedule. A provider ~~[shall]~~may not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: May 27, 2020

Notice of Continuation: July 2, 2018

Authorizing, and Implemented or Interpreted Law: 26-18-13

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code	R414-60-4	Filing No. 52796
Ref (R no.):		

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W, Salt Lake City	
Mailing address:	PO Box 143102	
City, state, 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:

R414-60-4. Program Coverage	
3. Effective Date:	
05/27/2020	
4. Purpose of the new rule or reason for the change:	
The purpose of this change is to allow Medicaid members easier access to Non-Controlled Schedule 2 (Non-CII) medications during the Coronavirus (COVID-19) Pandemic.	
5. Summary of the new rule or change:	
This amendment waives the proof of delivery requirement for pharmacies that distribute Non-CII medications, to allow Medicaid members easier access to prescriptions during the COVID-19 Pandemic. The amendment, however, also maintains the proof of delivery requirement for Controlled Schedule 2 (CII) medications, and further clarifies documentation requirements for pharmacies.	
6. Regular rulemaking would:	
X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
	place the agency in violation of federal or state law.
Specific reason and justification:	
This emergency rule is necessary to provide Medicaid members access to Non-CII medications during the COVID-19 Pandemic.	

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated impact to the state budget as there are no additional costs associated with the temporary flexibility surrounding proof of delivery of Non-CII medications.
B) Local governments:
There is no impact to local governments as there are no additional costs associated with the temporary flexibility surrounding proof of delivery of Non-CII medications.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated impact to small businesses as there are no additional costs associated with the temporary flexibility surrounding proof of delivery of Non-CII medications.

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 is no anticipated impact to pharmacies and other service providers, as there are no additional costs associated with the temporary flexibility surrounding proof of delivery of Non-CII medications.
8. Compliance costs for affected persons:
There is no anticipated impact to a single pharmacy or other service providers, as there are no additional costs associated with the temporary flexibility surrounding proof of delivery of Non-CII medications.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
Businesses will neither see cost nor revenue through waiver of the proof of delivery requirement.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):
Section 26-1-5 Section 26-18-3

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	Date:	05/27/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-60. Medicaid Policy for Pharmacy Program.

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(e) ~~[Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.]~~ A pharmacy must maintain documentation that a Medicaid member or authorized representative has received a prescription for a covered outpatient drug. The documentation must clearly identify the covered outpatient drug and the date it was received.

(i) The Division of Medicaid and Health Financing (DMHF) shall waive the proof of delivery requirement during the Coronavirus (COVID-19) emergency period for Non-Controlled Schedule 2 (Non-CII) prescriptions.

(ii) In accordance with Subsection R414-60-4(3)(e), the proof of delivery requirement remains for Controlled Schedule 2 (CII) medications that includes a signature or other documentation. The pharmacy shall document member receipt as stated in Subsection R414-60-4(3)(e).

(f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 14 days must be reversed and any payment from Medicaid must be returned.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: May 27, 2020

Notice of Continuation: April 28, 2017

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

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R539-2-5	Filing No. 52800

Agency Information

1. Department:	Human Services	
Agency:	Services for People with Disabilities	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Kelly Thomson	435-669-4855	kthomson@utah.gov

Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R539-2-5. Person-Centered Process
3. Effective Date:
05/28/2020
4. Purpose of the new rule or reason for the change:
The Centers for Medicare and Medicaid Services (CMS) approved Appendix K amendments to some service administration processes during the declared state of emergency. CMS approved an extended timeline for annual person-centered planning meetings during the COVID-19 emergency. The temporary rule change adds an exception to Division of Services for People with Disabilities' (DSPD) person-centered process requirements.
5. Summary of the new rule or change:
The rule change allows DSPD to extend timelines for annual person-centered planning meetings during the COVID-19 state of emergency.
6. Regular rulemaking would:
<input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input checked="" type="checkbox"/> place the agency in violation of federal or state law.
Specific reason and justification:
CMS approved an extended timeline for annual person-centered planning meetings during the COVID-19 emergency. The temporary rule change adds an exception to DSPD's person-centered process requirements. Implementation of the Appendix K amendment supports administrative flexibility for service planning during the rapidly changing state of emergency.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
No anticipated costs or savings for the state budget. An annual person-centered planning meeting is a waiver requirement, and an extension of the deadline will not reduce or increase the frequency of the planning meeting.

B) Local governments:
Local governments are not involved in person-centered planning. No anticipated costs or savings for local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses are not involved in person-centered planning. No anticipated costs or savings for small businesses.
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 <i>agency</i>):
Person-centered planning is included in DSPD services. No anticipated costs or savings for any person.
8. Compliance costs for affected persons:
There are no compliance costs for person-centered planning.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
After conducting a thorough analysis, it was determined that this proposed rule change will not result in a significant fiscal impact to small businesses.
B) Name and title of department head commenting on the fiscal impacts:
Ann Williamson, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):
Section 62A-5-102 Section 62A-5-103

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, DHS Deputy Director	Date:	05/28/2020
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R539. Human Services, Services for People with Disabilities. R539-2. Service Coordination. R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

NOTICES OF 120-DAY (EMERGENCY) RULES

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(A) Except when the COVID-19 emergency prevents the annual meeting. The annual meeting may be held as soon as possible.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

KEY: services, people with disabilities

Date of Enactment or Last Substantive Amendment: May 28, 2020

Notice of Continuation: July 15, 2019

Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R539-3-8	Filing No. 52799

Agency Information

1. Department:	Human Services	
Agency:	Services for People with Disabilities	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Kelly Thomson	435-669-4855	kthomson@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R539-3-8. Notice of Agency Action and Administrative Hearings

3. Effective Date:

05/28/2020

4. Purpose of the new rule or reason for the change:

The Centers for Medicare and Medicaid Services (CMS) approved Appendix K amendments to some service administration processes during the declared state of emergency. CMS waived their requirement for a notice of agency action for service changes made as a direct result of COVID-19. The temporary rule change adds an exception to the Division of Services for People with Disabilities' (DSPD) notice of agency action requirements.

5. Summary of the new rule or change:

The rule change allows DSPD to waive the notice of agency action requirement for service changes made as a direct result of the COVID-19 state of emergency.

6. 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
- place the agency in violation of federal or state law.

Specific reason and justification:

CMS waived their requirement for a notice of agency action for service changes made as a direct result of COVID-19. The temporary rule change adds an exception to DSPD's notice of agency action requirements. Implementation of the Appendix K amendment supports administrative flexibility for service changes necessary to respond to the rapidly changing state of emergency. The exception only waives written notice of agency action, not the direct involvement of individuals and families with making service decisions.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

No anticipated costs or savings for the state budget. The cost associated with notices of agency action is the cost to mail. The number of notices potentially not mailed would not constitute a measurable savings.

B) Local governments:

Local governments are not involved in notices of agency action. No anticipated costs or savings for local governments.

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

Small businesses are not involved in notices of agency action. No anticipated costs or savings for small businesses.

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**):

A notice of agency action is sent at no cost to the person. No anticipated costs or savings for any person.

8. Compliance costs for affected persons:

There are no compliance costs for a notice of agency action.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-5-102	Section 62A-5-103	
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Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, DHS Deputy Director	Date:	05/28/2020
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R539. Human Services, Services for People with Disabilities.

R539-3. Rights and Protections.

R539-3-8. Notice of Agency Action and Administrative Hearings.

(1) Persons have the right to receive adequate written Notice of Agency Action and to present grievances about agency action by requesting a formal or informal administrative hearing in accordance with R497-100 for Persons receiving non-Waiver services, and R410-14 for Persons receiving Waiver services.

(2) Pursuant to Utah Code Annotated, Title 63G, Chapter 4, the Division shall notify a Person in writing before taking any agency action, such as changes in funding, eligibility, or services.

(3) At least 30 calendar days before the Division terminates or reduces a Person's services or benefits, the Division shall send the Person a written Notice of Agency Action.

(a) Except during the COVID-19 emergency.

(i) If a change is made to a person's service as a direct result of the COVID-19 emergency, that change does not require a written Notice of Agency Action.

(4) The Notice of Agency Action shall comply with Subsection 63G-4-201 and R497-100-4(2)(a).

(5) To assist a Person in requesting an administrative hearing, the Division shall send the Person a Hearing Request Form 490S when the Division sends the Notice of Agency Action Form 522.

(6) To request an informal hearing with the Department of Human Services for non-waiver services, the Person must file a Hearing Request Form 490S with the Division within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(7) To request a formal hearing with the Department of Health for Waiver services, the Person must file the Medicaid Standard Hearing Request Form with the Division and Department of Health, Division of Health Care Finance within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(8) This 30-day deadline for formal and informal hearings applies regardless of whether the Person also wishes to participate in the Division's conflict resolution process.

(a) If the Person files the Hearing Request within ten calendar days of the mailing date of the Notice of Agency Action, the Person's services shall continue unchanged during the formal or informal hearing process.

(b) If the Person files the Hearing Request Form between 11 and 30 calendar days after the mailing date of the Notice of Agency Action, the Person is entitled to an administrative hearing, but the Person's services and benefits shall be discontinued or reduced according to the Notice of Agency Action during the formal or informal hearing process.

(9) A Person may file a Request for Hearing Form for a formal or informal hearing and choose to still participate in the Division's conflict resolution process prior to the formal or informal hearing.

(10) If the Person requests an informal hearing and also chooses the conflict resolution process, the conflict resolution process must be completed before the informal hearing can begin, unless the Person submits a written request to the Division to end the conflict resolution process prematurely.

KEY: people with disabilities, rights

Date of Enactment or Last Substantive Amendment: May 28, 2020

Notice of Continuation: July 15, 2019

Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103

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 <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R15-1	Filing No. 50001

Agency Information

1. Department:	Administrative Services	
Agency:	Administrative Rules (Office of)	
Street address:	4315 S 2700 W	
City, state, zip:	Taylorsville, Utah 84129-2128	
Mailing address:	PO Box 141007	
City, state, zip:	Salt Lake City, Utah 84114-1007	
Contact person(s):		
Name:	Phone:	Email:
Michael Broschinsky	801-957-7100	mbroschi@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R15-1. Administrative Rule Hearings
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 63G-3-402(2) directs the Office of Administrative Rules to establish administrative rule hearing procedures by 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:

No written comments have been received since the last five-year review of 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:

Well-delineated procedures for holding administrative rule hearings benefit both the public and the state. The benefit to the public is an opportunity to present its views, either in opposition or support, of a proposed rulemaking action. Views are presented in an orderly manner, either vocally or by the submission of written comment, both of which become part of the rule's administrative record.

The benefit to the state is that an organized and orderly mechanism for obtaining the public's views may provide the state information that it did not have, leading to a better-drafted rule.

Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michael Broschinsky, Director	Date:	06/01/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R23-7	Filing No. 50026
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Agency Information

1. Department:	Administrative Services	
Agency:	Facilities Management	and Construction

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W 3rd Floor	
City, state, zip:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Mike Kelley		mkelley@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R23-7. State Construction Contracts and Drug and Alcohol Testing
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 Subsection 63A-5-103(a), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, as well as Subsection 63G-6a-1303(4) of the Utah Procurement 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:
There have been no written comments received during the last five-year period.
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 comply with the provisions of Section 63G-6a-1303 of the Utah Procurement Code. The rule is necessitated by statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Joe Burgess, Chairman	Date:	05/12/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R105-3	Filing No. 50207

Agency Information

1. Department:	Attorney General
Agency:	Administration
Building:	Heber M. Wells

Street address:	160 East 300 South	
City, state, zip:	Salt Lake City UT 84111	
Contact person(s):		
Name:	Phone:	Email:
David Sonnenreich		dsonnenreich@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R105-3. White Collar Crime Registry
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 purpose of this rule is to establish procedures to efficiently administer the Utah White Collar Crime Offender Registry. These rules are made pursuant to the rulemaking authority granted by Subsection 77-42-107(1).
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 have been no written comments received in the last five-year period.
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 establish procedures to efficiently administer the Utah White Collar Crime Offender Registry which is still an active registry. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Sean Reyes, Attorney General	Date:	05/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-500	Filing No. 50462

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state, zip:	Salt Lake City, UT 84111

Mailing address:	PO Box 144200	
City, state, 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:
R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks
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 Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the State Board of Education (Board), Section 53E-6-201 which requires the Board to make rules requiring participation in professional learning activities in order for educators to retain Utah licensure, and Subsection 53E-3-401(4) which permits the Board to adopt rules in accordance with its responsibilities.
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 written 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:
Rule R277-500 is going through the approval process to be repealed because the rule requirements will be incorporated into new Board Rule R277-302. Therefore, this rule is continued until the repeal can be made effective.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	06/01/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R495-820	Filing No. 51163

Agency Information

1. Department:	Human Services
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Agency:	Administration	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R495-820. Institutional Review Board
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, in accordance with Section 62A-1-111, sets forth procedures and standards that are in compliance with the federal requirements of 45 CFR 46, 21 CFR 50, 21 CFR 56, 21 CFR 312, 21 CFR 812, 45 CFR 164.508, and 45 CFR 164.512, to implement the Department of Human Services Institutional Review 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 written comments have been received during and since the last five-year review of 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 Department of Human Services Institutional Review Board and is required to set forth requirements and standards for its operation. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	05/29/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R512-11	Filing No. 51212

Agency Information

1. Department:	Human Services
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FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Agency:	Child and Family Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R512-11. Accommodation of Moral and Religious Beliefs and Culture
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 62A-4a-102 authorizes the Division of Child and Family Services (Division) to establish rules in order to provide programs and services that support the strengthening of family values, including accommodating moral and religious beliefs and culture of families.
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:
Continuation of this rule is necessary in order for the Division to continue accommodating the moral and religious beliefs and culture of families.

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	Date:	05/14/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R512-203	Filing No. 51229
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Agency Information

1. Department:	Human Services
Agency:	Child and Family Services

Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R512-203. Child Protective Services, Significant Risk Assessments
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 62A-4a-102 authorizes the Division of Child and Family Services (Division) to establish rules in order to provide programs and services that support the strengthening of family values, including how significant risk assessments are utilized by the Division's caseworkers.
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:
Continuation of this rule is necessary in order for the Division's caseworkers to continue to utilize significant risk assessments.

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	Date:	05/14/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R512-308	Filing No. 51241
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Agency Information

1. Department:	Human Services
Agency:	Child and Family Services
Building:	MASOB

Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R512-308. Out-of-Home Services, Guardianship Services and Placements
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 62A-4a-102 authorizes the Division of Child and Family Services (Division) to establish rules in order to provide programs and services that support the strengthening of family values, including providing guardianship services, and supporting guardianship placements.
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:
Continuation of this rule is necessary in order for the Division to continue to provide guardianship services and support guardianship placements.

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	Date:	05/14/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R657-6	Filing No. 51729

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	Department of Natural Resources

Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116-3154	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coon	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-6. Taking Upland Game
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 Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken. This rule is specific to the taking of Upland Game.
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 supporting or opposing Rule R657-6 has been received since the last rule review in 2015.
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 R657-6 provides the procedures, standards, and requirements for taking upland game. The provisions adopted in this rule are effective in providing the standards and requirements for taking upland game birds. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, Director	Date:	05/18/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R657-11	Filing No. 51731

Agency Information

1. Department:	Natural Resources
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FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116-3154	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coon	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-11. Taking Furbearers and Trapping
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 Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken. This rule is specific to the taking of Furbearers and the use of trapping.
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 supporting or opposing Rule R657-11 has been received since the last rule review in 2015.
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 R657-11 provides the application procedures, standards, and requirements for taking furbearers. The provisions adopted in this rule are effective in providing the standards and requirements for taking furbearers. Continuation of this rule is necessary for continued success of the furbearer program and providing furbearer hunting opportunities.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, Director	Date:	06/01/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R657-24	Filing No. 51748
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Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116-3154	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coon	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-24. Compensation for Mountain Lion, Bear, Wolf or Eagle Damage
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 23-14-1, the Wildlife Board is authorized to provide rules to administer and enforce the procedures to obtain compensation for livestock damage done by mountain lion, bear, wolf, or eagle.
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 supporting or opposing Rule R657-24 has been received since the last rule review in 2015.
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 R657-24 provides the procedures, standards, requirements, and limits for obtaining compensation for damages to livestock by mountain lion, bear, wolf, or eagle. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, Director	Date:	06/01/2020
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Agency Authorization Information

Agency head or designee, and title:	Dave Woolstenhulme, Interim Commissioner	Date:	05/27/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R765-609	Filing No. 52002

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R765-611	Filing No. 51993

Agency Information

1. Department:	Regents (Board of)	
Agency:	Administration	
Building:	Board of Regents Building	
Street address:	60 S 400 W	
City, state, zip:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Geoff Landward	801-554-8131	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

Agency Information

1. Department:	Regents (Board of)	
Agency:	Administration	
Building:	Board of Regents Building	
Street address:	60 S 400 W	
City, state, zip:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Geoff Landward	801-554-8131	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R765-609. Regents' Scholarship
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 Regents Scholarship is a statutorily created scholarship program, Section 53B-8-108 et seq., granting Utah high school graduates with scholarship funding based on their academic performance and completion of prescribed high school curriculum.
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 Board of Regents has not received any written comments regarding this administrative 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 program is statutorily created and funded. Statute governing this program is still in place, as is the Regents' obligation to continue administering the program until such time as the Legislature repeals the program. Therefore, this rule should be continued.

General Information

2. Rule catchline:
R765-611. Veterans Tuition Gap 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:
Section 53B-13B-103 creates the Veterans Tuition Gap program, which provides grant funding to qualifying veterans pursuing a bachelor's degree and whose benefits under the Federal program have been exhausted or are not available. This is a statutorily mandated program that directs the Board to create policies to administer it in accordance with statute.
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 Board of Regents has not received any written comments regarding this administrative 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 program is statutorily created and funded. Statute governing this program is still in place, as is the Regents' obligation to continue administering the program until such

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

time as the Legislature repeals the program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Dave Woolstenhulme, Interim Commissioner	Date:	05/27/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R916-6	Filing No. 52111
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Agency Information

1. Department:	Transportation	
Agency:	Operations, Construction	
Room no.:	First Floor Administration Suite	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@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:
R916-6. Drug and Alcohol Testing in State Construction Contracts
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 required by Subsection 63G-6a-1303(4)(b) and is enacted under the authority of Subsection 72-1-201(1)(h).
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 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 required by Subsection 63G-6a-1303(4)(b), which is still in effect. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	05/26/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R926-13	Filing No. 52134
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Agency Information

1. Department:	Transportation	
Agency:	Program Development	
Room no.:	First Floor Administration Suite	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@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:
R923-13. Designated Scenic Byways

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 required by Subsection 72-4-303(4)(e). The purpose of this rule is: 1) to identify specific highways currently designated as state scenic byways; 2) define the limits of the individual scenic byways for all purposes related to that designation; and 3) the specific state scenic byways within the currently having also been designated by the National Scenic Byways Program of the Federal Highway Administration as either National Scenic Byways or All-American 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 of Transportation 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 required by Subsection 72-4-303(4)(e), which is in effect. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	05/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R926-14	Filing No. 52132

Agency Information

1. Department:	Transportation	
Agency:	Program Development	
Room no.:	First Floor Administration Suite	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-	lhull@utah.gov

End of the Five-Year Notices of Review and Statements of Continuation Section

	4253	
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:

R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes

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 required by Subsection 72-4-303(4). The purpose of this rule is: 1) the administration of the Utah Scenic Byway program; 2) the criteria that a highway shall possess to be considered for designation as a state scenic byway; 3) the process for nominating a highway to be designated as a state scenic byway; 4) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road; 5) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and 6) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of corridor, and related notifications.

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 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 required by Subsection 72-4-303(4), which is in effect. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	05/20/2020
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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.

Administrative Services

Facilities Construction and Management
No. 52492 (Amendment): R23-33. Rules for the
Prioritization and Scoring of Capital Improvements by the
Utah State Building Board
Published: 02/01/2020
Effective: 05/20/2020

Finance

No. 52655 (New Rule): R25-22. Financial Institution
Validation for Access to Medical Inventory Control System
Published: 05/01/2020
Effective: 06/08/2020

Purchasing and General Services

No. 52485 (Amendment): R33-26. State Surplus Property
Published: 02/01/2020
Effective: 05/20/2020

Agriculture and Food

Marketing and Development
No. 52631 (Amendment): R65-13. Utah's Own
Published: 04/15/2020
Effective: 05/28/2020

Regulatory Services

No. 52653 (Amendment): R70-101. Bedding, Upholstered
Furniture, and Quilted Clothing
Published: 05/01/2020
Effective: 06/08/2020

Education

Administration
No. 52635 (Amendment): R277-419. Pupil Accounting
Published: 04/15/2020
Effective: 05/26/2020

No. 52637 (Amendment): R277-477. Distributions of Funds
from the Trust Distribution Account and Administration of the
School LAND Trust Program
Published: 04/15/2020
Effective: 05/26/2020

No. 52570 (Amendment): R277-553. Charter School
Oversight, Monitoring and Appeals
Published: 04/15/2020
Effective: 05/26/2020

No. 52638 (Amendment): R277-604. Private School, Home
School, and Bureau of Indian Affairs (BIA) Student
Participation in Public School Achievement Tests
Published: 04/15/2020
Effective: 05/26/2020

No. 52639 (Amendment): R277-613. LEA Disruptive
Student Behavior, Bullying, Cyber-bullying, Hazing,
Retaliation, and Abusive Conduct Policies and Training
Published: 04/15/2020
Effective: 05/26/2020

No. 52640 (Amendment): R277-708. Enhancement for At-
Risk Students
Published: 04/15/2020
Effective: 05/26/2020

Environmental Quality

Air Quality
No. 52596 (Amendment): R307-101. Version of the Code
of Federal Regulations Incorporated by Reference
Published: 04/01/2020
Effective: 06/04/2020

No. 52597 (Amendment): R307-210. Standards of
Performance for New Stationary Sources
Published: 04/01/2020
Effective: 06/04/2020

NOTICES OF RULE EFFECTIVE DATES

No. 52598 (Amendment): R307-214. National Emission Standards for Hazardous Air Pollutants
Published: 04/01/2020
Effective: 06/04/2020

No. 52599 (Amendment): R307-405. Applicability
Published: 04/01/2020
Effective: 06/04/2020

No. 52600 (Amendment): R307-410. Permits: Emissions Impact Analysis
Published: 04/01/2020
Effective: 06/04/2020

Governor

Economic Development
No. 52670 (New Rule): R357-28. Talent Ready Connections Program
Published: 05/01/2020
Effective: 06/08/2020

Human Services

Child Protection Ombudsman (Office of)
No. 52633 (Amendment): R515-1. Processing Complaints Regarding the Utah Division of Child and Family Services
Published: 04/15/2020
Effective: 06/01/2020

Insurance

Administration
No. 52647 (Amendment): R590-160. Adjudicative Proceedings
Published: 05/01/2020
Effective: 06/08/2020

No. 52648 (Repeal): R590-278. Consent Requests Under 18 USC 1033(e)(2)
Published: 05/01/2020
Effective: 06/08/2020

No. 52649 (Amendment): R590-281. Eligibility to Apply for a License
Published: 05/01/2020
Effective: 06/08/2020

Natural Resources

Oil, Gas and Mining; Oil and Gas
No. 52641 (Amendment): R649-1. Definitions
Published: 04/15/2020
Effective: 06/01/2020

No. 52642 (Amendment): R649-2. General Rules
Published: 04/15/2020
Effective: 06/01/2020

End of the Notices of Rule Effective Dates Section