

# UTAH STATE BULLETIN

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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.

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

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

Office of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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

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

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## EXECUTIVE ORDER 2020-71

### Wildland Fire Management

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

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

**WHEREAS**, fire restrictions and wildfire warnings are in place in some areas of the State;

**WHEREAS**, the fire season has extended into November and extreme dry conditions have occurred and are forecasted throughout the State;

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

**WHEREAS**, we have seen fires that are not immediately extinguished soon after ignition have grown to large fires;

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

**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**, 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 November 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 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 3rd day of November, 2020.

(State Seal)

**Gary R. Herbert**  
**Governor**

ATTEST:

**Spencer J. Cox**  
**Lieutenant Governor**

2020/071/EO

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**EXECUTIVE ORDER**  
**2020-72**

Declaring a State of Emergency Due to Rising COVID-19 Case Counts Creating a Shortage of Hospital Beds

**WHEREAS**, Novel Coronavirus Disease 2019 (COVID-19) has been characterized by the World Health Organization as a worldwide pandemic caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

**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**, on October 2, 2020, the United States Department of Health and Human Services renewed its January 31, 2020, determination that a nationwide public health emergency exists and has existed since January 27, 2020;

**WHEREAS**, on October 14, 2020, the Utah Department of Health issued State Public Health Order 2020-17, declaring a statewide public health emergency due to the COVID-19 pandemic;

**WHEREAS**, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and economic and social disruption throughout the state;

**WHEREAS**, the Utah Department of Health has reported 132,621 total cases of COVID-19 and 6,084 COVID-19-related hospitalizations as of November 8, 2020;

**WHEREAS**, the Utah Department of Health has reported 659 COVID-19-related deaths as of November 8, 2020;

**WHEREAS**, on November 7, 2020, the Utah Department of Health reported a record-high number of 2,956 new cases of COVID-19;

**WHEREAS**, hospitalizations for COVID-19 in Utah have increased significantly in the past two months and hospitalizations continue to increase;

**WHEREAS**, treatment in intensive care units (ICU) in referral center hospitals is required by many critically ill COVID-19 patients;

**WHEREAS**, Utah has limited ICU capacity in referral center hospitals to which serious COVID-19 patients are referred, and 85% of such capacity is being used, which is beginning to strain and overtax physical capacity and medical staffing capacity;

**WHEREAS**, the current rates of increase in COVID-19 cases and hospitalizations are creating demands on ICU capacity that will likely soon overwhelm ICUs and may lead to degraded care and increased mortality for both COVID-19 and non-COVID-19 patients;

**WHEREAS**, if the State does not take action to mitigate the increasing strain on ICUs, hospitals will be required to implement Crisis Standards of Care to determine which patients receive medical services based on the limited resources available;

**WHEREAS**, there is no existing vaccine for COVID-19;

**WHEREAS**, the COVID-19 pandemic requires cooperation by public health authorities, hospitals, and the general population to avoid overwhelming hospitals and causing the higher case fatality rates experienced by other countries and regions of the United States;

**WHEREAS**, it is imperative that state and local officials and health authorities implement measures to protect the health and safety of Utah residents to mitigate the spread of COVID-19 and prevent overwhelming hospitals;

**WHEREAS**, Utah Code § 53-2a-206(1) provides that a state of emergency may be declared by executive order of the governor if the governor finds a "disaster" has occurred or the occurrence or threat of a disaster is imminent in any area of the state in which state government assistance is required to supplement the response and recovery efforts of the affected political subdivision or political subdivisions;

**WHEREAS**, Utah Code § 53-2a-102(5) provides that a "disaster" is an event that causes, or threatens to cause, loss of life, human suffering, public or private property damage, or economic or social disruption resulting from "natural phenomena," among other things;

**WHEREAS**, Utah Code § 53-2a-102(13) provides that "natural phenomena" include an "epidemic";

**WHEREAS**, I find that increasing case counts combined with the associated shortage of hospital beds due to the COVID-19 epidemic present a continuing threat to public health and economic and social stability sufficient to constitute a statewide disaster within the intent of the Utah Code Title 53, Chapter 2a, Disaster Response and Recovery Act;

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

1. the continued execution of the State Emergency Operations Plan;
2. assistance from State government to political subdivisions as needed and coordinated by the Utah Department of Health, the Utah Department of Public Safety, and other state agencies as necessary;
3. the continued dissemination of timely and accurate information by state agencies to the public that will mitigate the spread of COVID-19, prevent unnecessary confusion or alarm, mitigate negative impacts to the economy, and prevent overwhelming hospitals;
4. the continued outreach and assistance to the populations most vulnerable to COVID-19; and
5. coordination with local authorities and the private sector to maximize access to appropriate medical care while preserving critical services for those most in need.

This Order shall take effect November 9, 2020, at 1:00 p.m. and shall remain in effect through December 8, 2020, unless extended by the Utah State Legislature, or terminated earlier if I find the threat of danger has passed or reduced to the extent that emergency conditions no longer exist.

**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 8th day of November, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/072/EO

**EXECUTIVE ORDER  
2020-73**

Temporary Statewide COVID-19 Restrictions

**WHEREAS**, on November 8, 2020, I issued Executive Order 2020-72, declaring a state of emergency Due to Rising COVID-19 Case Counts Creating a Shortage of Hospital Beds;

**WHEREAS**, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

**WHEREAS**, the number of COVID-19 cases in Utah has sharply increased, causing serious illness and death to Utah residents, threatening public health and wellness throughout the state;

**WHEREAS**, Utah is experiencing a significant increase in the use of medical resources;

**WHEREAS**, new minimum standards are needed to prevent and control the rapidly changing consequences of COVID-19 throughout the state;

**WHEREAS**, the Centers for Disease Control (CDC) has called on Americans to wear face coverings, with the CDC director stating that "[c]loth face coverings are one of the most powerful weapons we have to slow and stop the spread of the virus--particularly when used universally within a community setting," and that "[a]ll Americans have a responsibility to protect themselves, their families, and their communities";

**WHEREAS**, analysis by Brigham Young University researchers reviewing more than 115 studies on the effectiveness of masks in controlling COVID-19 found that "[t]here is clear evidence that face coverings reduce the spray of droplets produced during speaking, coughing, and sneezing" and that "masks could be one of the most powerful and cost-effective tools to stop COVID-19 and accelerate the economic recovery";

**WHEREAS**, published scientific research has shown that the probability of transmission during exposure between a person infected with COVID-19 to an uninfected person is 17.4% if face coverings are not worn, and 3.1% if face coverings are worn;

**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. **Definitions.** As used in this Order:
  - a. "COVID-19" means Novel Coronavirus Disease 2019 caused by Severe Acute Respiratory Syndrome Coronavirus 2, also known as SARS-CoV-2.
  - b. "Department" means the Department of Health created in Utah Code § 26-1-8.
  - c. "Event host" means a person that owns, operates, provides facilities for, or has formal oversight over any of the following where a social gathering occurs: an amusement or water park, arena, aquarium, aviary, botanical garden, ceremony, cinema, comedy club, commercial event venue, commercial party venue, concert or concert hall, conference, convention or convention center, dance or dance hall, driver's education training, fair or fairground, museum, organized athletic or sporting event, recital, stadium, theater, or zoo.
  - d. "Extracurricular activity" means an activity, a course, or a program that is:
    - i. not directly related to delivering instruction;
    - ii. not a curricular activity or co-curricular activity as those terms are defined in Utah Code § 53G-7-501; and
    - iii. provided, sponsored, or supported by a school or a public or private institution of higher education, including a degree-granting institution and a technical college.
  - e. "Face mask" means a mask that completely covers the nose and mouth, is made of synthetic or natural fabrics, and fits snugly against the nose and sides of the face and under the chin. "Face mask" does not include a mask with an exhalation

valve, vent, or other hole or opening, or a mask that is crocheted or made of lace, mesh, or similar open weblike construction or material.

f. "Face shield" means a shield that covers the entire face—including the eyes, nostrils, and mouth of the wearer—is made of clear plastic or similar nonpermeable transparent material, and can be used in conjunction with a face mask for enhanced protection.

g. "Household" means an individual or a group of individuals who reside in the same residence.

h. "Local Education Agency" or "LEA" means a school district or a charter school.

i. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).

j. "School" means an LEA or private school that provides any kindergarten through grade-12 program or service, including a residential treatment center that provides any kindergarten through grade-12 program or service.

k. "Social gathering" means an in-person gathering of individuals from separate households. "Social gathering" does not include a gathering for a primarily educational or religious purpose.

2. **Restrictions.** The following restrictions apply statewide:

a. *Individuals.* An individual:

i. shall wear a face mask while within six feet of any individual from a separate household;

ii. may not eat or drink within six feet of an individual from a separate household while at a bar or restaurant; and

iii. may not attend a social gathering unless:

A. the social gathering has an event host or occurs at a business, including a bar or restaurant;

B. the individual complies with all face mask and physical distancing requirements.

b. *Event hosts.* An event host of a social gathering shall:

i. require each individual attending the social gathering to wear a face mask, including in an area of ingress or egress;

ii. require at least six feet of physical distance between individuals from separate households who attend the social gathering, including in an area of ingress or egress, unless the event host received a waiver pursuant to State Public Health Order 2020-19 or State Public Health Order 2020-20;

iii. post conspicuous signage at the social gathering that:

A. lists COVID-19 symptoms;

B. asks individuals experiencing COVID-19 symptoms to stay home; and

C. provides notice of face mask and physical distancing requirements; and

iv. complete and implement the Event Management Template provided by the Department.

c. *Businesses.*

i. A business, including a bar or restaurant, whether or not acting as an event host, shall:

A. require each employee and contractor to wear a face mask while at work;

B. require each patron that enters the premises of the business to wear a face mask, including in an area of ingress or egress;

C. require at least six feet of physical distance, including in an area of ingress or egress, between each:

1. separate household group at a business other than a bar or restaurant; or

2. separate party at a bar or restaurant; and

D. post conspicuous signage at each entrance to the business that:

1. lists COVID-19 symptoms;

2. asks employees and customers experiencing COVID-19 symptoms to stay home; and

3. provides notice of face mask and physical distancing requirements.

iii. A bar shall close no later than 10:00 p.m. each day.

d. *Athletic and Extracurricular Social Gatherings.*

i. Except as provided in Subsection (2)(d)(ii), a person may not participate in or be an event host for a social gathering that is an organized athletic or sporting event or extracurricular activity.

ii. Subsection (2)(d)(i) does not apply to:

A. an intercollegiate or professional athletic event; or

B. a high school football practice or game that meets the following conditions:

1. each participant, including each coach, trainer, staff member, and athlete, wears a face mask, except as provided in

Subsection (3)(viii);

2. the event host limits in-person attendance only to participating athletes and their coaches, trainers, staff members, and no more than two additional individuals per attending coach, trainer, athlete, or staff member.

3. each spectator wears a face mask and maintains at least six feet of physical distance from an individual from a different household; and

4. no coach, trainer, staff member, or athlete is permitted to participate in a game unless the coach, trainer, staff member, or athlete receives a negative test result from a diagnostic test approved by the United States Food and Drug Administration to determine current COVID-19 infection within 72 hours before the game.

e. *Institutions of Higher Education.* Beginning as soon as possible, but no later than January 1, 2021, a public or private institution of higher education, including a degree-granting institution or technical college, shall require each individual who is enrolled as a student of the institution of higher education and who lives in on-campus housing or attends at least one in-person class provided by the institution of higher education to obtain a diagnostic test approved by the United States Food and Drug Administration to determine current COVID-19 infection each week.

**3. Face mask exceptions.**

a. Notwithstanding any other provision of this Order, an individual who is otherwise required by this Order to wear a face mask may remove the face mask in the following situations:

- i. while actively eating or drinking;
- ii. while as the sole occupant of a room, cubicle, or similar enclosure;
- iii. when communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means and the speaker wears a face shield or uses alternative protection such as a plexiglass barrier;
- iv. while obtaining or providing a service that requires the temporary removal of the face mask, such as dental services or speech therapy services;
- v. while sleeping;
- vi. while exercising outdoors, or while exercising indoors and maintaining at least six feet of physical distance from any other individual from a separate household;
- vii. while swimming or on duty as a lifeguard;
- viii. while actively performing as an athlete at an organized athletic event authorized under Subsection (2)(f)(ii);
- ix. while giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation or performance for an audience;
- x. when engaging in work where wearing a face mask would create a risk to the individual, as determined by government safety guidelines;
- xi. when necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution; and
- xii. when federal or state law or regulations prohibit wearing a face mask.

b. The following individuals are exempt from the face mask requirements in Section (2):

- i. a child who is younger than three years old;
- ii. an individual who is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance; and
- iii. an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a face mask; and
- iv. an individual who is incarcerated.

**4. Local education agencies.**

a. An LEA is not subject to the provisions of Section (2)(b) and (2)(c).

b. An LEA shall comply with the requirements of the "Planning Requirements and Recommendations for K-12 School Reopening," created by the Utah State Board of Education.

**5. Religious services.** This Order does not apply to a religious service. Faith-based organizations are strongly encouraged to implement protocols to mitigate the spread of COVID-19.

**6. Effect on other laws.**

a. To the extent that any provision of this Order conflicts with a provision of State Public Health Order 2020-11, the provisions of this Order shall control.

b. Nothing in this Order may be construed to prohibit a local health department from issuing a health order that is more stringent than this Order.

**7. Severability.** If a provision of this Order or the application of a provision to any person or circumstance is held invalid, the remainder of this Order shall be given effect without the invalid provision or application. The provisions of this Order are severable.

This Order is effective on November 9, 2020, at 1:00 p.m. and shall remain in effect through November 23, 2020, unless otherwise 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 8th day of November, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/073/EO

**EXECUTIVE ORDER  
2020-74**

Temporary Statewide COVID-19 Restrictions

**WHEREAS**, on November 8, 2020, I issued Executive Order 2020-72, declaring a state of emergency Due to Rising COVID-19 Case Counts Creating a Shortage of Hospital Beds;

**WHEREAS**, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

**WHEREAS**, the number of COVID-19 cases in Utah has sharply increased, causing serious illness and death to Utah residents, threatening public health and wellness throughout the state;

**WHEREAS**, Utah is experiencing a significant increase in the use of medical resources;

**WHEREAS**, new minimum standards are needed to prevent and control the rapidly changing consequences of COVID-19 throughout the state;

**WHEREAS**, the Centers for Disease Control (CDC) has called on Americans to wear face coverings, with the CDC director stating that "[c]loth face coverings are one of the most powerful weapons we have to slow and stop the spread of the virus--particularly when used universally within a community setting," and that "[a]ll Americans have a responsibility to protect themselves, their families, and their communities";

**WHEREAS**, analysis by Brigham Young University researchers reviewing more than 115 studies on the effectiveness of masks in controlling COVID-19 found that "[t]here is clear evidence that face coverings reduce the spray of droplets produced during speaking, coughing, and sneezing" and that "masks could be one of the most powerful and cost-effective tools to stop COVID-19 and accelerate the economic recovery";

**WHEREAS**, published scientific research has shown that the probability of transmission during exposure between a person infected with COVID-19 to an uninfected person is 17.4% if face coverings are not worn, and 3.1% if face coverings are worn;

**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. **Definitions.** As used in this Order:
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  - b. "Department" means the Department of Health created in Utah Code § 26-1-8.
  - c. "Event host" means a person that owns, operates, provides facilities for, or has formal oversight over any of the following where a social gathering occurs: an amusement or water park, arena, aquarium, aviary, botanical garden, ceremony, cinema, comedy club, commercial event venue, commercial party venue, concert or concert hall, conference, convention or convention center, dance or dance hall, driver's education training, fair or fairground, museum, organized athletic or sporting event, recital, stadium, theater, or zoo.
  - d. "Extracurricular activity" means an activity, a course, or a program that is:
    - i. not directly related to delivering instruction;
    - ii. not a curricular activity or co-curricular activity as those terms are defined in Utah Code § 53G-7-501; and
    - iii. provided, sponsored, or supported by a school or a public or private institution of higher education, including a degree-granting institution and a technical college.

EXECUTIVE DOCUMENTS

e. "Face mask" means a mask that completely covers the nose and mouth, is made of synthetic or natural fabrics, and fits snugly against the nose and sides of the face and under the chin. "Face mask" does not include a mask with an exhalation valve, vent, or other hole or opening, or a mask that is crocheted or made of lace, mesh, or similar open weblike construction or material.

f. "Face shield" means a shield that covers the entire face—including the eyes, nostrils, and mouth of the wearer—is made of clear plastic or similar nonpermeable transparent material, and can be used in conjunction with a face mask for enhanced protection.

g. "Household" means an individual or a group of individuals who reside in the same residence.

h. "Local Education Agency" or "LEA" means a school district or a charter school.

i. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).

j. "School" means an LEA or private school that provides any kindergarten through grade-12 program or service, including a residential treatment center that provides any kindergarten through grade-12 program or service.

k. "Social gathering" means an in-person gathering of individuals from separate households. "Social gathering" does not include a gathering for a primarily educational or religious purpose.

2. **Restrictions.** The following restrictions apply statewide:

a. *Individuals.* An individual:

i. shall wear a face mask while within six feet of any individual from a separate household;

ii. may not eat or drink within six feet of an individual from a separate household while at a bar or restaurant; and

iii. may not attend a social gathering unless:

A. the social gathering has an event host or occurs at a business, including a bar or restaurant; and

B. the individual complies with all face mask and physical distancing requirements.

b. *Event hosts.* An event host of a social gathering shall:

i. require each individual attending the social gathering to wear a face mask, including in an area of ingress or egress;

ii. require at least six feet of physical distance between individuals from separate households who attend the social gathering, including in an area of ingress or egress, unless the event host received a waiver pursuant to State Public Health Order 2020-19 or State Public Health Order 2020-20;

iii. post conspicuous signage at the social gathering that:

A. lists COVID-19 symptoms;

B. asks individuals experiencing COVID-19 symptoms to stay home; and

C. provides notice of face mask and physical distancing requirements; and

iv. complete and implement the Event Management Template provided by the Department.

c. *Businesses.*

i. A business, including a bar or restaurant, whether or not acting as an event host, shall:

A. require each employee and contractor to wear a face mask while at work;

B. require each patron that enters the premises of the business to wear a face mask, including in an area of ingress or egress;

C. require at least six feet of physical distance, including in an area of ingress or egress, between each:

1. separate household group at a business other than a bar or restaurant; or

2. separate party at a bar or restaurant; and

D. post conspicuous signage at each entrance to the business that:

1. lists COVID-19 symptoms;

2. asks employees and customers experiencing COVID-19 symptoms to stay home; and

3. provides notice of face mask and physical distancing requirements.

ii. An on-premise licensee of the Department of Alcoholic Beverage Control shall not sell, offer to sell, or furnish liquor or beer after 10:00 p.m.

d. *Athletic and Extracurricular Social Gatherings.*

i. Except as provided in Subsection (2)(d)(ii), a person may not participate in or be an event host for a social gathering that is an organized athletic or sporting event or extracurricular activity.

ii. Subsection (2)(d)(i) does not apply to:

A. an intercollegiate or professional athletic event; or

B. a high school football practice or competition if the following conditions are met:

1. in-person attendance is limited to only participating athletes—including football players, cheerleaders, and drill team members—and their coaches, trainers, staff members, and no more than two additional individuals per attending coach, trainer, athlete, or staff member;

2. each attending athlete, coach, trainer, and staff member, wears a face mask, except as provided in Subsection (3)(a)(viii);

3. each attending spectator wears a face mask and maintains at least six feet of physical distance from any other individual from a separate household;

4. an athlete, coach, trainer, or staff member is permitted to participate in a competition only if the coach, trainer, staff member, or athlete receives a negative test result from a diagnostic test approved by the United States Food and Drug Administration to determine current COVID-19 infection within 72 hours before the game; and

5. an Event Management Template provided by the Department is completed and implemented for the practice or competition.

C. an athletic event held by a private business or organization, that is not a school, including a fitness facility or athletic club, if the following conditions are met:

1. in-person attendance is limited to only participating athletes and their coaches, trainers, staff members, and no more than two additional individuals per attending coach, trainer, athlete, or staff member;

2. each attending athlete, coach, trainer, and staff member maintains six feet physical distance from any individual from a separate household;

3. each attending spectator wears a face mask and maintains at least six feet of physical distance from an individual from a separate household; and

4. an Event Management Template provided by the Department is completed and implemented for the athletic event.

iii. A person that owns, operates, provides facilities for, or has formal oversight over an athletic event, including a practice or competition, authorized under Subsection (2)(d)(ii) is not subject to the requirements of Subsection (2)(b) for that event.

e. *Institutions of Higher Education.* Beginning as soon as possible, but no later than January 1, 2021, a public or private institution of higher education, including a degree-granting institution or technical college, shall require each individual who is enrolled as a student of the institution of higher education and who lives in on-campus housing or attends at least one in-person class provided by the institution of higher education to obtain a diagnostic test approved by the United States Food and Drug Administration to determine current COVID-19 infection each week.

### 3. **Face mask exceptions.**

a. Notwithstanding any other provision of this Order, an individual who is otherwise required by this Order to wear a face mask may remove the face mask in the following situations:

i. while actively eating or drinking;

ii. while as the sole occupant of a room, cubicle, or similar enclosure;

iii. when communicating with an individual who is deaf or hard of hearing if:

A. communication cannot be achieved through other means; and

B. the speaker wears a face shield or uses alternative protection such as a plexiglass barrier;

iv. while obtaining or providing a service that requires the temporary removal of the face mask, such as dental services or speech therapy services;

v. while sleeping;

vi. while exercising or engaging in athletic training while:

A. outdoors; or

B. indoors and maintaining at least six feet of physical distance from any other individual from a separate household;

vii. while swimming or on duty as a lifeguard;

viii. while actively performing as an athlete at an organized athletic event authorized under Subsection (2)(d)(ii);

ix. while giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation or performance for an audience;

x. when engaging in work where wearing a face mask would create a risk to the individual, as determined by government safety guidelines;

xi. when necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution; and

xii. when federal or state law or regulations prohibit wearing a face mask.

b. The following individuals are exempt from the face mask requirements in Section (2):

i. a child who is younger than three years old;

ii. an individual who is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance; and

iii. an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a face mask; and

iv. an individual who is incarcerated.

### 4. **Local education agencies.**

a. An LEA is not subject to the provisions of Section (2)(b) and (2)(c).

b. An LEA shall comply with the requirements of the "Planning Requirements and Recommendations for K-12 School Reopening," created by the Utah State Board of Education.

5. **Religious services.** This Order does not apply to a religious service. Faith-based organizations are strongly encouraged to implement protocols to mitigate the spread of COVID-19.

### 6. **Effect on other laws.**

a. This Order supersedes Executive Order 2020-73;

b. To the extent that any provision of this Order conflicts with a provision of State Public Health Order 2020-11, the provisions of this Order shall control.

c. Nothing in this Order may be construed to prohibit a local health department from issuing a health order that is more stringent than this Order.

7. **Severability.** If a provision of this Order or the application of a provision to any person or circumstance is held invalid, the remainder of this Order shall be given effect without the invalid provision or application. The provisions of this Order are severable.

EXECUTIVE DOCUMENTS

This Order is effective on November 9, 2020, at 1:00 p.m. and shall remain in effect through November 23, 2020, unless otherwise 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 9th day of November, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/074/EO

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 16, 2020, 12:00 a.m., and November 02, 2020, 11:59 p.m. are included in this, the November 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 December 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 March 15, 2021, 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.

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R156-82	Filing No. 53162

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City, UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Larry Marx	801-530-6254	lmarx@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R156-82. Electronic Prescribing Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is repealed based upon the repeal of Title 58, Chapter 82, Electronic Prescribing Act, by H.B. 177 passed in the 2020 General Session.
<b>4. Summary of the new rule or change:</b>
This rule is repealed in its entirety based upon the repeal of Title 58, Chapter 82, by H.B. 177 (2020), and the repeal will not have any impacts because all changes were included in H.B. 177.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated cost or savings to the state budget because this rule is repealed based upon the repeal of Title 58, Chapter 82, by H.B. 177 (2020).
<b>B) Local governments:</b>
There are no anticipated cost or savings to local governments because this rule is repealed based upon the repeal of Title 58, Chapter 82, Electronic Prescribing Act, by 2020 HB 177.

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

There are no anticipated cost or savings to small businesses because this rule is repealed based upon the repeal of Title 58, Chapter 82, by H.B. 177 (2020).

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

There are no anticipated cost or savings to the non-small businesses because this rule is repealed based upon the repeal of Title 58, Chapter 82, by H.B. 177 (2020).

**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 are no anticipated cost or savings to other persons because this rule is repealed based upon the repeal of Title 58, Chapter 82, by H.B. 177 (2020).

**F) Compliance costs for affected persons:**

There are no anticipated compliance costs for affected persons because this rule is repealed based upon the repeal of Title 58, Chapter 82, by H.B. 177 (2020).

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Commerce, Chris Parker, 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 of Occupational and Professional Licensing repeals the Electronic Prescribing Act Rule pursuant to the repeal of Title 58, Chapter 82, by H.B. 177 (2020).

Small Businesses (less than 50 employees): There is no anticipated cost or savings to small businesses. Rule R156-82, is repealed based upon the repeal of Title 58, Chapter 82. Therefore, no fiscal impact is expected for small business as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses (50 or more employees): There is no expected fiscal impact to non-small businesses with the repeal of the Electronic Prescribing Act Rule, R156-82. Similar to the above mentioned reasoning for the fiscal impact for small businesses, further costs are either inestimable or there is no fiscal impact.

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

Chris Parker, 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 58-1-106(1)(a)	Section 58-82-101
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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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	11/02/2020
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**R156. Commerce, Occupational and Professional Licensing. [R156-82. Electronic Prescribing Act Rule.**

~~**R156-82-101. Title.**~~

~~This rule is known as the "Electronic Prescribing Act Rule."~~

~~**R156-82-103. Authority Purpose.**~~

~~This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 82.~~

~~**R156-82-201. Security.**~~

~~(1) Practitioners and pharmacies who transmit and receive controlled substance prescriptions shall comply with 21 CFR 1311, as amended March 31, 2010, and subsequently amended.~~

~~(2) Electronic prescribing for non-controlled substances shall be conducted in a secure manner, consistent with industry standards.~~

~~**R156-82-202. Informing Patients.**~~

~~(1) Practitioners shall fully inform their patients of their:~~

- ~~(a) rights;~~
- ~~(b) restrictions; and~~
- ~~(c) obligations pertaining to electronic prescribing.~~

~~**R156-82-203. Waiver.**~~

~~The Division may grant an exemption from the requirements in accordance with Subsection 58-82-201(6).~~

~~**KEY: licensing, electronic prescribing**~~

~~**Date of Enactment or Last Substantive Amendment: February 8, 2016**~~

~~**Notice of Continuation: November 27, 2017**~~

~~**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-82-101**~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R356-2	Filing No. 53141

**Agency Information**

<b>1. Department:</b>	Governor	
<b>Agency:</b>	Criminal and Juvenile Justice (State Commission on)	
<b>Room no.:</b>	330	
<b>Building:</b>	Utah State Capitol Complex, Senate Building	
<b>Street address:</b>	350 N State Street	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142330	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2330	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Cordova	801-425-7346	kimcordova@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R356-2. Judicial Nominating Commissions
<b>3. Purpose of the new rule or reason for the change:</b>
The amendments to this rule reflect the updated process of the application process and addresses some procedural issues that conform to Section 78A-10-1 and the Utah State Constitution.
<b>4. Summary of the new rule or change:</b>
These amendments update the application process that is now paperless and more accurately reflects the governing statute and constitution.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The changes are technical and clarify processes and do not impact the meaning of this rule.
<b>B) Local governments:</b>
The changes to this rule do not affect local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

The changes to this rule do not affect small businesses.

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

The changes to this rule do not affect non-small businesses.

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

The changes are technical and clarify processes. They do not affect the meaning of this rule.

**F) Compliance costs for affected persons:**

There are no compliance costs 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>H) Department head approval of regulatory impact analysis:</b>
The Executive Director of the Commission on Criminal and Juvenile Justice, Kim Cordova, has reviewed and approved this fiscal analysis.
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
None--there are no fiscal impacts.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Kim Cordova Executive Director

**Citation Information**

<b>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):</b>		
Section 78A-10-1	Article VIII, Section 8	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)		
<b>A) Comments will be accepted until:</b>	12/15/2020	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
12/01/2020	12:00 PM	Commission on Criminal and Juvenile Justice, Utah State Capitol Complex, Senate Building, 350 N State Street, Salt Lake City, UT

<b>10. This rule change MAY become effective on:</b>	12/22/2020
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**

<b>Agency head or designee, and title:</b>	Kim Cordova, Executive Director	<b>Date:</b>	10/27/2020
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**R356. Governor, Criminal and Juvenile Justice (State Commission on).**

**R356-2. Judicial Nominating Commissions.**

**R356-2-1. Definitions.**

As used in Rule R356-2:

(1) "Application period" means the period of time [during which] applications for a judicial vacancy may be submitted and begins with the posting of a notice of vacancy and ends with the closing period for submitting applications as identified in the notice of vacancy. The application period is part of the recruitment period.

(2) "CCJJ" means the staff of the Commission on Criminal and Juvenile Justice.

(3) "Commission" means the judicial nominating commission having authority over the judicial vacancy.

(4) "Commission staff" means the individuals assigned by the governor to provide staff support to the commission pursuant to [Utah Code Annotated Section]Subsections 78A-10-203(2) or 78A-10-303(2).

(5) "Notice of vacancy" means the announcement of a current or pending judicial vacancy by CCJJ to the public as provided in Section R356-2-3.

(6) "Organizational meeting" means the first meeting of a commission after the close of the recruitment period.

(7) "Recruitment period" means the period of time beginning with the posting of a notice of vacancy and ending with the completion of [all tasks]each task necessary to convene the commission. The recruitment period includes the application period.

**R356-2-2. Recruitment Period.**

(1) CCJJ shall begin the recruitment period for a judicial vacancy 235 days before the effective date of the judicial vacancy unless sufficient notice is not given, in which case CCJJ shall begin the recruitment period within 10 days of receipt of notice of the judicial vacancy by the governor.

(2) The application period for a judicial vacancy shall be a minimum of 30 days.

(3) The recruitment period for a judicial vacancy shall be a minimum of 30 days but not more than 90 days unless fewer than nine applications are received for a judicial vacancy in which case the recruitment period may be extended up to an additional 30 days.

**R356-2-3. Notice of Vacancy.**

(1) As part of the recruitment period, CCJJ shall post a notice of vacancy on its website and shall provide a notice of vacancy to:

- (a) the Utah State Bar to be distributed to its members;
- (b) members of the media;
- (c) the Administrative Office of the Courts;
- (d) the president of the Utah Senate; and
- (e) other offices and associations as CCJJ determines appropriate.

(2) The notice of vacancy shall include:

- (a) the jurisdiction of the court in which the vacancy occurs;

NOTICES OF PROPOSED RULES

- (b) the constitutional minimum requirements for judicial office;
- (c) a brief description of the work of the court;
- (d) the method for obtaining application forms;
- (e) the application deadline; and
- (f) the method for submitting oral or written comments at a meeting of the commission.

**R356-2-4. Applications.**

- (1) Applications for a judicial vacancy shall include:
  - (a) an application form established by CCJJ ~~[which]that~~ shall require applicants to provide:
    - (i) education history;
    - (ii) work history;
    - (iii) evidence of constitutional qualifications;
    - (iv) information regarding litigation as a party;
    - (v) attorney and judicial references as provided in Section R395-2-5; and
    - (vi) other information relevant to fitness to serve as a judge as determined by CCJJ;

(b) a waiver of the right to review the records in the nomination and appointment processes;

(c) a waiver of confidentiality of records ~~[which]that~~ are the subject of investigation by the commission; and

(d) an authorization for CCJJ to obtain consumer reports about the applicant; ~~[; and]~~

~~[(e) a one paragraph summary of professional qualifications that will be made available to the public if the applicant's name is released for public comment prior to nomination.~~

~~\_\_\_\_\_ (2) Applicants shall submit:~~

~~\_\_\_\_\_ (a) an original and eight copies of the complete application;~~

~~\_\_\_\_\_ (b) an original and eight copies of the applicant's resume; and~~

~~\_\_\_\_\_ (c) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.~~

~~\_\_\_\_\_ (3) If the applicant has applied for another judicial position within the prior year, the applicant may satisfy the application requirements by submitting:~~

~~\_\_\_\_\_ (a) a letter to CCJJ expressing interest in applying for the judicial vacancy and in using the previously submitted application; and~~

~~\_\_\_\_\_ (b) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.~~

~~\_\_\_\_\_ (4) CCJJ shall establish application forms and make the forms available electronically and in hard copies.]~~

~~[(5)](2) Applications are considered timely submitted if CCJJ receives [all]the application materials prior to the application deadline. ~~[Applications mailed, but not received by CCJJ, prior to the application deadline are not considered timely submitted.]~~ Partial applications are not considered timely submitted.~~

~~[(6)](3) Following the receipt of applications, CCJJ shall conduct investigations in the following areas for each applicant:~~

- (a) criminal background;
- (b) disciplinary actions taken by the Utah State Bar;
- (c) disciplinary actions taken by the Judicial Conduct Commission; and
- (d) consumer credit.

**R356-2-5. References.**

(1) Applicants who are engaged in an adversarial practice shall submit the following types of references as specified in the application:

- (a) lawyers adverse to the applicant in litigation or negotiations;

(b) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;

(c) judges assigned to cases in which the applicant acted as a lawyer; and

(d) judges who know the applicant.

(2) Applicants who are engaged in a non-adversarial practice and who are not judges shall submit the following types of references as specified in the application:

(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years; and

(b) judges who know the applicant.

(3) Applicants who are judges shall submit the following types of references as specified in the application:

(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;

(b) judges who know the applicant; and

(c) lawyers who represented parties in cases over which the applicant presided as judge.

~~[(4) CCJJ shall select which references will be contacted and requested to complete a standard reference form established by CCJJ.]~~

**R356-2-6. Pre-Screening of Applications.**

(1) CCJJ shall review the applications upon the passing of the application deadline and remove ~~[all]the~~ applications submitted by applicants who do not meet the constitutional qualifications.

~~[(2) CCJJ shall provide to all members of the commission a list of all applicants identified as not meeting the constitutional qualifications.]~~

**R356-2-7. Meetings of the Commission.**

(1) The commission shall convene an organizational meeting within 10 days of the end of the recruitment period.

(2) During the organizational meeting the commission shall:

- (a) allow public comment concerning:
  - (i) the nominating process;
  - (ii) qualifications for judicial office;
  - (iii) issues facing the judiciary; and
  - (iv) other issues as determined appropriate by the commission; and

(b) following public comment, close the meeting to the public to:

- (i) establish a timeframe for certifying a list of nominees to the governor;
- (ii) discuss applicants; and
- (iii) discuss conflicts of interest as provided in Section R356-2-9.

(3) The Commission may meet as necessary to certify the list of nominees to the governor, but shall certify the list of nominees no later than 45 days after convening the organizational meeting.

(4) The chair of the commission presides at ~~[all]each~~ meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process.

(5) The member of the Judicial Council appointed by the chief justice of the Utah Supreme Court pursuant to ~~[Utah Code Annotated Section]~~ Subsections 78A-10-202(6) or 78A-10-302(8) shall be a full participant in discussions of the commission, but may not vote.

(6) The commission staff shall:

(a) ensure that the commission follows the rules promulgated by CCJJ;

(b) resolve any questions regarding the rules promulgated by CCJJ;

(c) take summary minutes of commission meetings ~~which~~ that shall include:

- (i) the date, time and place of the meeting;
  - (ii) a list of the commission members present and a list of those absent or excused;
  - (iii) a list of commission staff present;
  - (iv) a general description of the decisions made;
  - (v) any declarations by commission members of a relationship, interest or bias concerning any applicant;
  - (vi) a record of the total tally of ~~all votes~~ each vote, but not the vote of individual commission members;
  - (vii) written statements submitted to the commission; and
  - (viii) any other matter desired by the commission to be included; and
- (d) perform other tasks assigned by the commission that are consistent with governing statutes and rules.

(7)(a) The commission shall determine which applicants will be invited to interview.

(b) Each commission member shall have the opportunity to question applicants during interviews and to discuss the qualifications of applicants.

~~\_\_\_\_\_ (e) In questioning applicants and discussing the qualifications of applicants, the chair shall speak last and the member of the Judicial Council appointed by the chief justice of the Utah Supreme Court shall speak next to last.]~~

(8)(a) If a commission member refuses to follow governing statutes or rules, the commission member is disqualified from the commission and the governor shall appoint a replacement.

(b) The commission staff determines whether a commission member refuses to follow governing statutes or rules.

(9)(a) Following ~~at~~ each applicant interview[s], commission members shall determine ~~by confidential ballot~~ which applicants will be certified to the governor as nominees by confidential ballot.

(b) The Appellate Court Nominating Commission shall certify a list of seven names to the governor.

(c) Trial Court Nominating Commissions shall certify a list of five names to the governor.

(10)(~~a~~) Prior to certifying the list of nominees to the governor, the commission shall allow public comment on the nominees for a minimum of 10 days.

~~\_\_\_\_\_ (b) Following the public comment, the commission may remove an applicant from the list of nominees if:~~

- ~~\_\_\_\_\_ (i) the commission receives new information about an applicant that demonstrates the applicant is unfit to serve as a judge;~~
- ~~\_\_\_\_\_ (ii) provides to the applicant being considered for removal from the list of nominees a copy of any written comments received during the public comment period about that applicant;~~
- ~~\_\_\_\_\_ (iii) allows the applicant being considered for removal from the list the opportunity to respond to the information received during the public comment period; and~~
- ~~\_\_\_\_\_ (iv) not less than one fewer than the total number of commission members at the meeting vote in favor of removing the applicant from the list of nominees.~~

~~\_\_\_\_\_ (d) If the commission removes an applicant from the list of nominees the commission shall select another nominee from among the interviewed applicants and again allow public comment on the nominees for a minimum of 10 days.]~~

**R356-2-8. Certifying the List of Nominees.**

(1) After the commission has determined which applicants to include in the list of nominees, it shall deliver the list of nominees to the

governor, the president of the Senate and the Office of Legislative Research and General Counsel by letter from the chair of the commission.

(2) Commission staff shall deliver to the governor a copy of the complete application and ~~at~~ the related documents for each nominee.

(3)(a) If a nominee withdraws before the governor has made an appointment, the commission may, at the request of the governor, nominate a replacement if ~~it~~ the commission can do so before the expiration of the commission's original 45-day deadline.

(b) Unless time permits, the commission does not need to publish the name of the replacement nominee for public comment.

**R356-2-9. Conflicts of Interest.**

(1) Commission members shall disclose during the organizational meeting the existence and nature of a relationship with an applicant that may impact the commission member's ability to fairly and impartially evaluate the applicant or any other applicant.

(2)(a) A commission member who believes they have a relationship with an applicant that will impact their ability to fairly and impartially evaluate an applicant shall recuse themselves from the nominating process.

(b) If a commission member discloses a relationship with an applicant and does not recuse themselves from the nominating process, ~~the commission may, by majority vote, disqualify the commission member from participation if the commission believes the relationship will impact the commission member's ability to fairly and impartially evaluate an applicant.~~ the commission staff will disqualify the commission member from participation if the commission staff believe the relationship will impact the commission member's ability to fairly and impartially evaluate an applicant.

(c) A commission member who has recused themselves or been disqualified by ~~the commission~~ the commission staff may rejoin the nominating process if:

(i) the applicant with whom the commission member has a relationship is no longer being considered by the commission; and

(ii) ~~the commission decides, by majority vote, to~~ the commission staff decides to allow the commission member to participate.

(3) A commission member who is related to an applicant within the third degree shall be disqualified from the nominating process.

**R356-2-10. Evaluation Criteria.**

(1) In addition to criteria established by the Utah Constitution and the Utah Code Annotated, commission members shall during the nomination process consider the applicants':

- (a) integrity;
- (b) legal knowledge and ability;
- (c) professional experience;
- (d) judicial temperament;
- (e) work ethic;
- (f) financial responsibility;
- (g) public service;
- (h) ability to perform the work of a judge; and
- (i) impartiality.

(2) When evaluating applicants for a juvenile court judge position, commission members shall consider the applicants' interest in, understanding of, and experience with ~~the issues and problems facing~~ children and families' issues and problems.

(3) When evaluating applicants for an appellate court position, commission members shall consider the applicants' ability to

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give and receive criticism of opinions and arguments without taking offense.

(4) When deciding among applicants for any judicial position whose qualifications, taken as a whole, appear in all other respects to be comparable, it is relevant to consider the applicants' background and experience [~~of the applicants in relation to~~]the current composition of the bench for which the appointment is being made.

(5) Unless otherwise provided by statute, members of trial court nominating commissions may not decline to interview an applicant or decline to nominate an applicant based primarily on the geographic location of the applicant's residence or the geographic location of the applicant's employment.

**R356-2-11. Confidentiality.**

(1) [~~All applications~~]Applications and any related documents for a judicial vacancy, names of applicants and all discussions during commission meetings are confidential.

(2)(a) Except as provided in Subsection R356-2-8(2) and in this Subsection (2) or as otherwise required by law, commission members and commission staff shall not disclose the details of applications or the details of commission discussions to any person other than commission members or commission staff.

(b) Commission members may disclose the names of applicants only as necessary to make limited inquiries regarding [~~the qualifications of applicants~~]reference information received.

(c) Commission staff may disclose the names of applicants only as necessary to make inquiries regarding the qualifications of applicants.

~~\_\_\_\_\_ (3)(a) Commission members shall return all applications and related documents to commission staff at the conclusion of the nomination process.~~

~~\_\_\_\_\_ (b) Notes taken by a commission member are not returned to commission staff.~~

~~\_\_\_\_\_ (c) Commission staff shall retain one copy of the application materials in accordance with an approved retention schedule and shall destroy other copies of the application materials.~~

[(4)](3) Commission staff shall destroy [~~all~~]each ballot[s] used during the nomination process.

**R356-2-12. Notice that a Judge is Removed or Intends to Resign or Retire.**

The Administrative Office of the Courts shall immediately notify the governor and CCJJ if it learns that a state judge:

- (1) has submitted formal notice of intent to retire;
- (2) has submitted formal notice of intent to resign;
- (3) has been removed from office; or
- (4) has otherwise vacated the judicial office.

**KEY: judicial nominating commissions, judges**

**Date of Enactment or Last Substantive Amendment:** [~~April 2, 2018~~]2020

**Notice of Continuation:** June 26, 2015

**Authorizing, and Implemented or Interpreted Law:** 78A-10-103(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R362-4	Filing No. 53145

**Agency Information**

<b>1. Department:</b>	Governor	
<b>Agency:</b>	Energy Development (Office of)	
<b>Street address:</b>	60 E South Temple St. Suite 300	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144845	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4845	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Richard Bell	801-538-8682	rbell1@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R362-4. High Cost Infrastructure Development Tax Credit Act
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this amendment is to clarify provisions, eligibility, and reporting requirements for the High Cost Infrastructure Tax Credit Act.
<b>4. Summary of the new rule or change:</b>
This rule amendment clarifies qualifying new state revenues, eligibility period, and annual reporting requirements for entities who have entered into an Authorization Agreement with the Governor's Office of Energy Development.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These changes create no additional requirements and will have no additional fiscal impact on the state budget.
<b>B) Local governments:</b>
These changes create no additional requirements and will have no additional fiscal impact on local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These changes create no additional requirements and will have no additional fiscal impact on small businesses.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These changes create no additional requirements and will have no additional fiscal impact on non-small businesses.

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

These changes create no additional requirements and will have no additional fiscal impact on other persons.

**F) Compliance costs for affected persons:**

These changes create no additional requirements and will have no additional fiscal impact on 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 rule amendment.

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

I have reviewed the proposed amendments and they do not create new or additional fiscal impacts to businesses.

I approve the entire filing, including the fiscal impact section. Rob Simmons

**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 63M-4-602	Section 59-7-619	Section 59-10-1034
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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:** 12/30/2020

**10. This rule change MAY become effective on:** 01/06/2021

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**

<b>Agency head or designee, and title:</b>	Richard Bell, Incentives Director	<b>Date:</b>	10/30/2020
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**R362. Governor, Energy Development (Office of). R362-4. High Cost Infrastructure Development Tax Credit Act. R362-4-1. Purpose.**

~~[(4)]~~Pursuant to ~~Title 63M, Chapter 4, Part 6,~~ the High Cost Infrastructure Development Tax Credit Act ~~[at Utah Code Section 63M-4-601 et seq.]~~ ("the Act"), and in accordance with Utah Code Title 63G,

NOTICES OF PROPOSED RULES

Chapter 3, Utah Administrative Rulemaking Act, this ~~[R]~~rule establishes ~~[clarifies]~~requirements and ~~[establishes]~~procedures for implementation of the High Cost Infrastructure Development Tax Credit. ~~[by the Utah Governor's Office of Energy Development ("OED") of the Act.]~~

~~[(2) This Rule clarifies eligibility requirements for high cost infrastructure tax credits; establishes procedures for eligible taxpayers to follow when applying for high cost infrastructure tax credits; clarifies approval, certification and reporting requirements, and provides clarification on how high cost infrastructure tax credits will be calculated.]~~

**R362-4-2. Authority.**

Pursuant to ~~[Utah Code]~~Section 63M-4-6~~[et seq.]~~, OED has authority to establish requirements and procedures for awarding tax credits to qualifying entities.

**R362-4-3. Definitions.**

~~[(1)—]Terms in this [R]rule are defined in [Utah Code] Sections 63M-4-602, 63M-4-603, and 63M-4-604. In addition the following definitions apply: [The definitions below are in addition to or serve to clarify those found in Utah Code Section 63M-4-602, 63M-4-603, and 63M-4-604.]~~

~~[(a)1] "Infrastructure" includes an energy delivery project designed to transmit, deliver or otherwise increase the capacity for the delivery of energy to a user.~~

~~[(b)2] "Infrastructure-related revenue" means an amount of tax revenue for an entity creating a high cost infrastructure project in a taxable year that is directly attributable to the high cost infrastructure project, under:~~

~~[(i)a] [Utah Code]Title 59, Chapter 7, Corporate Franchise and Income Taxes;~~

~~[(ii)b] [Utah Code]Title 59, Chapter 10, Individual Income Tax Act; and [s]~~

~~[(aa) Utah Code Title 59, Chapter 10, Individual Income Tax Act revenue shall be calculated by taking 75% of the employer state tax wage withholdings for the qualifying entity claiming a tax credit in the same taxable year for which the tax credit is being claimed.]~~

~~[(iii)c] [Utah Code]Title 59, Chapter 12, Sales and Use Tax Act.~~

~~[(iv)3] For a fuel standard compliance project, as defined under [Utah Code]Subsection 63M-4-602(2), infrastructure-related revenue means state revenues generated by an applicant after the completion of a fuel standard compliance project under: Title 59, Chapter 7, Corporate Franchise and Income Taxes; Title 59, Chapter 10, Individual Income Tax; and Title 59, Chapter 12, Sales and Use Tax Act.~~

~~[(e)4] "Office" means the Governor's Office of Energy Development created under [Utah Code]Section 63M-4-401.~~

~~[(d)5] "Board" means the Utah Energy Infrastructure Authority Board created under [Utah Code]Section 63H-2-202.~~

~~[(e)6] "Tax credit" means a certificate issued by the Office and recognized by the Utah State Tax Commission to an infrastructure cost-burdened entity under [Utah Code]Section 59-7-619 or [Utah Code]Section 59-10-1034.~~

**R362-4-4. Eligibility for Tax Credit.**

~~[(1)—]Requirements for establishing tax credit eligibility, include:~~

~~[(a)1] Meeting the definition of a high cost infrastructure project under [Utah Code]Subsection 63M-4-602;~~

~~[(i)2] ~~[All h]High cost infrastructure projects, including fuel standard compliance projects, must be physically located in [the State of] Utah.~~~~

~~[(b)3] Completing an application approved by the Office, including providing sufficient information to determine applicant eligibility;~~

~~[(e)4] Office determination that that applicant meets all eligibility requirements and referral to the Board for Board approval;~~

~~[(d)5] Receiving a favorable Board recommendation for granting tax credits to the applicant based on the Board's evaluation of the applicant project's benefit to the State of Utah based on factors described in [Utah Code]Section 63M-4-603(2); and,~~

~~[(i)6] The Board may find the applicant's project sufficiently benefits the State if the project satisfies some or all of the criteria described in [Utah Code]Subsection 63M-4-603(2).~~

~~[(e)7] Entering into an agreement with the Office described in [Utah Code]Section 63M-4- 603(3) authorizing a post-performance, non-refundable tax credit calculated in accordance with [Utah Code]Section 63M-4-603 and Utah Administrative Rule[s] R362-4-5.~~

~~[(8) An infrastructure cost burdened entity who does not begin project construction within 4 years of entering into an agreement with the Office described in Subsection 63M-4-603(3), may be required to reapply to regain eligibility.]~~

**R362-4-5. Calculation of Tax Credit.**

(1) An eligible applicant that has a qualifying high cost infrastructure project shall be granted a tax credit, on an annual basis, equal to 30% of the applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed. An eligible applicant may continue to receive tax credits for infrastructure-related revenues on an annual basis until it has received tax credits totaling 50% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Subsection 63M-4-603(4) has occurred.

~~[(a) An eligible applicant may continue to receive tax credits for infrastructure related revenues on an annual basis, as described above, until it has received tax credits totaling 50% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Utah Code Section 63M-4-603(4) has occurred.]~~

(2) An eligible applicant that has completed a fuel standard compliance project shall be granted a tax credit, on an annual basis, not to exceed 30% of applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed. The exact percentage of the tax credit will be determined by the Board based on criteria described in ~~[Utah Code]Section 63M-4-603.~~ An eligible applicant that has completed a fuel standard compliance project may continue to receive tax credits for infrastructure-related revenues on an annual basis until it has received tax credits totaling 30% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Subsection 63M-4-603(4) has occurred.

~~[(a) An eligible applicant that has completed a fuel standard compliance project may continue to receive tax credits for infrastructure related revenues on an annual basis, as described above, until it has received tax credits totaling 30% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Utah Code Section 63M-4-603(4) has occurred.]~~

(3) An independent certified public accountant, paid for by the infrastructure cost-burdened entity, shall certify applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed

**R362-4-6. Application Process.**

(1) The Office is responsible for certifying the high cost infrastructure project and authorizing any tax credit certificate.

(2) Applications for tax credits are to be made on forms developed by the Office to gather information necessary to certify the high cost infrastructure project and authorize tax credits based on the applicant's infrastructure related revenues.

(3) The Office will evaluate each application according to the definitions and criteria established by statute and by this [R]rule. If the information contained within an application is [~~inadequate~~]insufficient to determine eligibility according to this [R]rule, the Office reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide [~~adequate~~]sufficient information needed to determine eligibility, the Office may deny the application until sufficient information is provided.

(4) In order to verify the information submitted in the application and provided to the Board, the applicant may be required to supply additional information at the request of the Office.

(5) [~~All a~~]Applicants for a tax credit under this [R]rule shall provide the following information:

(a) The legal name of the person or entity seeking a tax credit.

(b) The tax identification number of the person or entity seeking the tax credit.

(c) The physical address, plat number, or global positioning satellite coordinates of the property where the high cost infrastructure project will be constructed, or such other information necessary to permit the Office staff to locate the site for on-site verification of the information in the application.

(d) A description of the high cost infrastructure project, including timeline. This description is to be accompanied by an itemized summary of all projected and [~~or~~] actual costs to be incurred during construction of the high cost infrastructure project.

(e) The applicant shall disclose any other tax credit[~~s~~] it has applied for or has received for the infrastructure burdened project when applying for a high cost infrastructure tax credit or during the performance period of a high cost infrastructure tax credit agreement.

(f) The documentation provided [~~shall~~]must be sufficient to allow the Office to identify the cost of the infrastructure construction associated with the high cost infrastructure project, both realized and [~~or~~] anticipated.

(6) [~~Those applicants~~]Applicants seeking a tax credit for the development of a fuel standard compliance project shall also include:

(a) A description of their current operation, including the current fuel standards being met by their existing operation.

(b) A description of the fuel standard compliance project to be undertaken by the company to produce fuel at a Utah refinery that will meet Tier 3 gasoline standards under 40 C.F.R. Section 79.54 and 80.1603.

(7) If, after evaluating an application, the Office determines that it meets all eligibility requirements, then it will be referred to the Board for Board approval. If, after evaluating an application, the Office determines that applicant is not eligible, the Office shall provide the applicant with a letter including an explanation for the denial.

~~[(a) If, after evaluating an application, the Office determines that applicant is not eligible, the Office shall provide the applicant with a letter including an explanation for the denial.]~~

(8) The Board shall consider the application for approval of tax credits at the next regularly scheduled Board meeting.

(9) An eligible applicant who has received a favorable recommendation from the Board for approval of tax credits shall enter into an agreement described in [~~Utah Code~~]Subsection 63M-4-603(3) with the Office.

**R362-4-7. Tax Credit Approval and Certification.**

(1) The Office is responsible for certifying high cost infrastructure tax credits.

(2) After receiving a complete application, including [~~all~~] requested documents supporting an applicant's tax credit eligibility, the Office shall determine whether the applicant has met the eligibility requirements described in [~~Utah Code~~]Subsection 63M-4-603(1) and in this [R]rule.

(3) If, after evaluating an application, the Office determines that an applicant is eligible for a tax credit, the Office shall refer the applicant to the Board for Board approval of tax credits based on the Board's evaluation of the project's benefit to Utah based on considerations described in [~~Utah Code~~]Section 63M-4-603 and in this [R]rule. The Board may find the applicant's project benefits the state if the project satisfies some or all of the criteria described in Section 63M-4-603.

~~[(a) The Board may find the applicant's project benefits the State if the project satisfies some or all of the criteria described in Utah Code Section 63M-4-603.]~~

(4) If an eligible applicant receives a favorable recommendation from the Board as described in [~~Utah Code~~]Subsection 63M-4-603(3) and this [R]rule, the Office will enter into an agreement described in [~~Utah Code~~]Subsection 63M-4-603(3).

(a) The agreement may include a tax credit authorization based upon the projected cost of the high cost infrastructure project as submitted in the completed application. Nevertheless, the [A]applicant may only claim a tax credit with a tax credit certificate based on the applicant's actual infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed.

(b) The agreement may contain other terms and conditions necessary to administer the tax credit and satisfy the requirements of the Act, including requiring the [A]applicant to provide the actual infrastructure construction cost to complete the high cost infrastructure project when available to allow the Office to correctly adjust the tax credit authorization.

(c) The agreement may [~~also~~]include conditions under which the agreement [~~and~~]or the tax credit or both may be modified or withdrawn, including addressing substantive changes to the [A]applicant's project not included in the application.

(d) As part of the agreement, the applicant must provide the Office annual reports prepared by an independent certified public accountant verifying the high cost infrastructure project's infrastructure-related revenue during the taxable year for which a tax credit is being claimed, as well as granting the Office access to relevant tax records.

~~[(5) Subject to the Act, Rule and agreement, the Office will deliver a tax credit certificate for each qualifying tax year to the applicant or the legal entity the applicant has assigned the tax credit to in accordance with Utah Administrative Rules R362-4-7(6), and provide a copy of the certificate to the Utah State Tax Commission.]~~

~~[(6) Applications for tax credits authorized under this chapter must state the legal entity who will claim the tax credit if other than the Applicant. As part of the tax credit application and approval process, the Office and Board must approve the assignment of the tax credit to the stated recipient.]~~

~~[(a) Any additional assignments and/or transfers of the tax credit are prohibited without the express consent of the Office and Board.]~~

~~[(7) Tax credits authorized by the Office can only be used to offset the applicant's Utah State tax liability under Title 59, Chapter 7, Corporate Franchise and Income Taxes; and, Title 59, Chapter 10, Individual Income Tax.]~~

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(~~§~~6) The [A]applicant must notify the Office and the Board of other tax credits it has applied for or has received when applying for a high cost infrastructure tax credit or during the performance period of a high cost infrastructure tax credit agreement. Additional tax credits and incentives may be taken into consideration in the Board evaluation of the project's benefit to Utah based on the criteria contained in Section 63M-4-603.

(~~a~~7) If the [A]applicant receives other tax credits or incentives after a high cost infrastructure tax credit Agreement has been established with the Office, the Board may reconsider the project's benefit to Utah based on the criteria contained in Section 63M-4-603, and the Office may amend the Agreement based on the Board's reconsideration of high cost infrastructure tax credit approval for the project.

### **R362-4-8. Tax Credit Period and Reporting Requirements.**

(1) The first reporting period shall begin on the commencement date of the tax credit period, which will be determined by the Office, and shall continue through ~~[December 31 of that calendar year]~~the end of that taxable year. The remaining tax credit and reporting periods shall each span consecutive ~~[calendar years from January 1 until December 31]~~taxable years. The final tax credit and reporting period will start ~~[on January 1 of the calendar year]~~on the beginning of the taxable year and end on the tax credit termination date as determined when any time period described in ~~[Utah Code S]~~Subsection 63M-4-603(4) has occurred.

(2) Within 300 days of the end of each reporting period, the infrastructure cost-burdened entity shall provide the Office an annual report and a report prepared and submitted by a CPA. Reasonable extensions to the 300 day reporting requirement may be granted by the Office.

~~[\_\_\_\_\_ (a) The report must be prepared by an independent certified public accountant.]~~

(~~b~~1) The annual report shall include the amount of infrastructure-related revenue that has been generated by the infrastructure cost-burdened entity during the taxable year for which the tax credit will be claimed, the total amount of tax credit that the infrastructure cost burdened entity has received, and the projected economic life of the high cost infrastructure project.

(b) The report prepared and submitted by a CPA shall be prepared in accordance with an agreed-upon procedure established by the Office for the Act. The report shall verify total construction costs, or changes to construction costs previously reported to the office, verify the amount of infrastructure-related revenue that has been generated by the entity during the taxable year for which the tax credit will be claimed, and verify the total amount of tax credits that the infrastructure cost burdened entity has received.

### **R362-4-9. Confidentiality.**

(1) In accordance with the requirements ~~[laid out]~~ in ~~[Utah Code]~~Section 63M-4-604, the Office will treat each applicant's documents as protected records under ~~[Utah Code]~~Sections 63G-2-305 and 63G-2-309. Notwithstanding this policy, the applicant will be responsible for providing the Office a business confidentiality form for documents submitted to the Office that it wants protected from public disclosure and clearly marking those documents confidential.

(2) [A]Each applicant ~~[understands and]~~ agrees to provide the Office sufficient information to determine eligibility, and the Board sufficient information to make a recommendation, as well as disclose sufficient information for the Office to meet its statutory reporting requirements.

(3) As part of the duties assigned to the Office in administering the tax credit, the Office is required to report to the Revenue and Taxation Interim Committee of the Utah State Legislature information related to the amount of tax credits granted, and the amount of infrastructure-related revenue generated by the high cost infrastructure projects receiving those tax credits.

(4) In accordance with the Utah Open and Public Meetings Act, Board meetings where voting on the approval of tax credits takes place will be open to the public.

### **R362-4-10. Appeals Procedure.**

(1) A denial of an applicant's request for a tax credit may be appealed by written request pursuant to ~~[Utah Code]~~Section 63G-4-201, and in accordance with this ~~[R]~~rule.

(2) A petitioner must request an appeal ~~[H]~~hearing[s must be requested] within 30 calendar days from the date that the Office sends written notice of its denial of tax credit.

(3) A petitioner's failure ~~[Failure]~~ to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the ~~[party]~~applicant is seeking agency relief, and the ~~[party]~~petitioner must submit the request on the "Request for Hearing ~~[/]~~ & Agency Action" form. The ~~[party]~~petitioner must then mail or fax the form to the address or fax number contained on the denial.

(4) The Board considers a hearing request that a ~~[recipient]~~petitioner sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Board considers the request to be filed on the date that the Board receives it, unless the ~~[sender]~~petitioner can demonstrate through clear and convincing evidence that it was mailed before the date of receipt.

(5) The Board shall hold informal adjudicative proceedings in accordance with ~~[Utah Code]~~Section 63G-4-202 and 63G-4-203. The Board shall notify the petitioner and Board representative of the date, time and place of the hearing at least ten days in advance of the hearing. ~~[C]~~A continuance[s] of a scheduled hearing ~~[s are]~~ is not favored, but may be ~~[for]~~allowed if good cause is shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The ~~[P]~~petitioner named in the ~~[notice of agency action and the Board]~~Request for Hearing & Agency Action form shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

(a) Testimony may be taken under oath.

(b) All hearings are open to all parties.

(c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(d) A respondent ~~[shall]~~will have access to relevant information contained in the Board's files and to material gathered in the investigation of respondent to the extent permitted by law.

(e) The Board may cause an official record of the hearing to be made, at the Board's expense.

(7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Board shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with ~~[Utah Code]~~Section 63G-4-203(i).

### **KEY: incentives**

**Date of Enactment or Last Substantive Amendment:** ~~[February 5, 2019]~~2020

**Authorizing, and Implemented or Interpreted Law:** 63M-4-601

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R414-49	Filing No. 53161

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to implement dental provisions set forth under S.B. 5001 passed in the 2020 Fifth Special Session.
<b>4. Summary of the new rule or change:</b>
This amendment implements dental provisions for blind or disabled members, targeted adult Medicaid members, and members of the aged population through updates to program access, dental coverage, and spend-up policy. It also makes other technical changes.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as funds previously allocated to the University of Utah School of Dentistry are simply transferred to the Department of Health to provide these services.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund nor provide dental services under the Medicaid program.

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

There is no impact on small businesses as the Legislature previously allocated funds for these services.

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

There is no impact on non-small businesses as the Legislature previously allocated funds for these services.

**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 impact on Medicaid providers and Medicaid members as the Legislature previously allocated funds for these services.

**F) Compliance costs for affected persons:**

There are no compliance costs to a single Medicaid provider or Medicaid member as the Legislature previously allocated funds for these services.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
Businesses will see neither revenue nor cost as the Legislature previously allocated funds for these services.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Richard G. Saunders, Interim Executive Director			

**Citation Information**

<b>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):</b>		
Section 26-1-5	Section 26-18-3	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	12/15/2020

<b>10. This rule change MAY become effective on:</b>	12/22/2020
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**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	10/30/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.**

**R414-49-5. Blind or Disabled Members.**

This section defines the scope of dental services available to blind or disabled members eligible for Traditional Medicaid who are 18 years of age or older, as defined in Subsection 1614(a) of the Social Security Act. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) ~~The following [P]program [A]access [R]requirements apply[-]:~~

(a) ~~[D]dental services are available only through an enrolled dental provider that complies with all relevant laws and policy[-]; and~~

~~(b) dental services provided to this population shall only be performed through the University of Utah School of Dentistry and their associated in-state provider network.~~

(2) ~~The following [C]coverage and [E]limitation[s] provisions apply[-]:~~

(a) ~~[D]dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid[-];~~

(b) ~~[D]dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions[-];~~

(c) ~~[A]additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual[-These limitations and exclusions], and are updated in the Medicaid Information Bulletin[-];~~

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic[-], not ~~[-M]multiple exams for the same date of service[-are not covered-];~~

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture[-];

(f) Medicaid may cover third[-]molar extractions when at least one of the third molars has documented pathology that requires extraction[-], and ~~[-B]by discretion, a provider may remove the remaining third molars during the same procedure[-];~~

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments[-]; and

(h) ~~[The]a laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.~~

(3) Medicaid does not cover the following types of dental services:

(a) ~~[C]composite resin fillings on posterior teeth;~~

~~[-(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth];~~

(e) ~~[b] [P]pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;~~

- (~~e~~)c) [~~F~~]fixed bridges or pontics;
  - (~~e~~)d) [~~A~~]all types of dental implants;
  - (~~f~~)c) [~~T~~]tooth transplantation;
  - (~~g~~)f) [~~R~~]ridge augmentation;
  - (~~h~~)g) [~~O~~]osteotomies;
  - (~~i~~)h) [~~V~~]vestibuloplasty;
  - (~~j~~)i) [~~A~~]alveoloplasty;
  - (~~k~~)j) [~~O~~]occlusal appliances, habit control appliances, or interceptive orthodontic treatment;
  - (~~k~~)k) [~~T~~]treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;
  - (~~m~~)l) [~~P~~]procedures such as arthroscopy, meniscectomy, or condylectomy;
  - (~~n~~)m) [~~N~~]nitrous oxide analgesia;
  - (~~e~~)n) [~~H~~]house calls;
  - (~~p~~)o) [~~C~~]consultation or second opinions not requested by Medicaid;
  - (~~q~~)p) [~~S~~]services provided without prior authorization;
  - (~~r~~)q) [~~G~~]general anesthesia for removal of an erupted tooth;
  - (~~s~~)r) [~~O~~]oral sedation for behavior management;
  - (~~t~~)s) [~~T~~]temporary dentures or temporary stayplate partial dentures;
  - (~~u~~)t) [~~L~~]limited orthodontic treatment, including removable appliance therapies;
  - (~~v~~)u) [~~R~~]removable appliances in conjunction with fixed banded treatment; and
  - (~~w~~)v) [~~E~~]extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.
- (4) The following [~~D~~]dental [~~S~~]services [~~U~~]apply[-]:
- (a) [~~A~~]a Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes the responsibility for the difference in fees for the following dental procedures:
    - (i) [~~C~~]covered amalgam fillings to non-covered composite resin fillings; and
    - ~~[(ii) Covered stainless steel crowns to non-covered porcelain or cast gold crowns; or~~
    - ~~[(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab-prepared facings).]~~
    - (ii) covered stainless-steel, porcelain, and cast crowns to cast gold crowns, which means porcelain fused to metal.

**R414-49-6. Targeted Adult Medicaid (TAM).**

This section defines the scope of dental services available to eligible [~~T~~]targeted [~~A~~]adult Medicaid members who are actively receiving treatment in a substance abuse treatment program as defined in Section 62A-2-101, licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

- (1) The following [~~P~~]program [~~A~~]access [~~R~~]requirements apply[-]:
  - (a) [~~D~~]dental services are available only through an enrolled dental provider that complies with all relevant laws and policy[-]; and
  - ~~[(b) Dental services for this population are provided through the University of Utah School of Dentistry (SOD), and its contracted providers.]~~
  - (b) dental services provided to this population shall only be performed through the University of Utah School of Dentistry and their associated in-state provider network.

(c) Before performing any dental services, SOD shall obtain verification of active treatment for substance use disorder (SUD) from the substance abuse treatment program. The SOD shall then submit an SUD verification form to Medicaid for each eligible TAM member. The SUD verification form is available in "All Providers General Attachments" on the Utah Medicaid website at <https://medicaid.utah.gov>.

(2) The following [~~C~~]coverage and [~~L~~]limitation[s] provisions apply[-]:

(a) [~~D~~]dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid[-];

(b) [~~D~~]dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions[-];

(c) [~~A~~]additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual[- ~~These limitations and exclusions~~], and are updated in the Medicaid Information Bulletin[-];

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic[-], not [~~M~~]multiple exams for the same date of service[- are not covered-];

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture[-];

(f) Medicaid may cover third[-]-molar extractions when at least one of the third molars has documented pathology that requires extraction[-], and [~~B~~]by discretion, a provider may remove the remaining third molars during the same procedure[-];

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments[-];

(h) [~~The~~]a laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services[-];

(i) Medicaid covers [~~P~~]porcelain crowns and cast crowns [porcelain fused to metal]. Cast crowns are porcelain fused to metal.

(3) Medicaid does not cover the following types of dental services:

- (a) [~~C~~]composite resin fillings on posterior teeth;
- (b) [~~P~~]pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;
- (c) [~~F~~]fixed bridges or pontics;
- (d) [~~A~~]all types of dental implants;
- (e) [~~T~~]tooth transplantation;
- (f) [~~R~~]ridge augmentation;
- (g) [~~O~~]osteotomies;
- (h) [~~V~~]vestibuloplasty;
- (i) [~~A~~]alveoloplasty;
- (j) [~~O~~]occlusal appliances, habit control appliances, or interceptive orthodontic treatment;
- (k) [~~T~~]treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;
- (l) [~~P~~]procedures such as arthroscopy, meniscectomy, or condylectomy;
- (m) [~~N~~]nitrous oxide analgesia;
- (n) [~~H~~]house calls;
- (o) [~~C~~]consultation or second opinions not requested by Medicaid;
- (p) [~~S~~]services provided without prior authorization;
- (q) [~~G~~]general anesthesia for removal of an erupted tooth;

NOTICES OF PROPOSED RULES

- (r) [O] oral sedation for behavior management;
  - (s) [F] temporary dentures or temporary stayplate partial dentures;
  - (t) [E] limited orthodontic treatment, including removable appliance therapies;
  - (u) [R] removable appliances in conjunction with fixed banded treatment; and
  - (v) [E] extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.
- (4) The following [D] dental [S] spend-[U] ups apply[-]:
- (a) [A] a Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:
    - (i) [C] covered amalgam fillings to non-covered composite resin fillings; and
    - (ii) [C] covered stainless-steel, porcelain, and cast crowns [~~(porcelain fused to metal)~~] to cast gold crowns, which means porcelain fused to metal.

**R414-49-7. Aged Members.**

This section defines the scope of dental services available to [A] aged members eligible for Traditional Medicaid who are 65 years of age or older, as defined in 42 U.S.C Sec. 1382c(a)(1)(A). Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

- (1) The following [P] program [A] access [R] requirements apply[-]:
- (a) [D] dental services are available only through an enrolled dental provider that complies with all relevant laws and policy[-]; and
  - ~~\_\_\_\_\_ (b) Dental services for this population are provided through the University of Utah School of Dentistry (SOD), and its contracted providers.~~
  - \_\_\_\_\_ (b) dental services provided to this population shall only be performed through the University of Utah School of Dentistry and their associated in-state provider network.
- (2) The following [C] coverage and [L] limitation[s] provisions apply[-]:
- (a) [D] dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid[-];
  - (b) [D] dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions[-];
  - (c) [A] additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual [~~- These limitations and exclusions~~], and are updated in the Medicaid Information Bulletin[-];
  - (d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic[-], not [~~-M~~] multiple exams for the same date of service [~~- are not covered~~];
  - (e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture[-];
  - (f) Medicaid may cover third [-] molar extractions when at least one of the third molars has documented pathology that requires extraction[-], and [~~-B~~] by discretion, a provider may remove the remaining third molars during the same procedure[-];

- (g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments[-];
  - (h) [~~The~~] a laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services[-];
  - (i) Medicaid covers [P] porcelain crowns and cast crowns [~~(porcelain fused to metal)~~]. Cast crowns are porcelain fused to metal.
- (3) Medicaid does not cover the following types of dental services:
- (a) [C] composite resin fillings on posterior teeth;
  - (b) [P] pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;
  - (c) [F] fixed bridges or pontics;
  - (d) [A] all types of dental implants;
  - (e) [F] tooth transplantation;
  - (f) [R] ridge augmentation;
  - (g) [O] osteotomies;
  - (h) [V] vestibuloplasty;
  - (i) [A] alveoloplasty;
  - (j) [O] occlusal appliances, habit control appliances, or interceptive orthodontic treatment;
  - (k) [F] treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;
  - (l) [P] procedures such as arthroscopy, meniscectomy, or condylectomy;
  - (m) [N] nitrous oxide analgesia;
  - (n) [H] house calls;
  - (o) [C] consultation or second opinions not requested by Medicaid;
  - (p) [S] services provided without prior authorization;
  - (q) [G] general anesthesia for removal of an erupted tooth;
  - (r) [O] oral sedation for behavior management;
  - (s) [F] temporary dentures or temporary stayplate partial dentures;
  - (t) [E] limited orthodontic treatment, including removable appliance therapies;
  - (u) [R] removable appliances in conjunction with fixed banded treatment; and
  - (v) [E] extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.
- (4) The following [D] dental [S] spend-[U] ups apply[-]:
- (a) [A] a Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:
    - (i) [C] covered amalgam fillings to non-covered composite resin fillings; and
    - (ii) [C] covered stainless-steel, porcelain, and cast crowns [~~(porcelain fused to metal)~~] to cast gold crowns, which means porcelain fused to metal.

**KEY: Medicaid**  
**Date of Enactment or Last Substantive Amendment: [March 1, 2020]**  
**Notice of Continuation: May 31, 2019**  
**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-281	Filing No. 53178

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St.	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-281. License Applications Submitted by Individuals Who Have a Criminal Conviction
<b>3. Purpose of the new rule or reason for the change:</b>
The current rule establishes license eligibility standards for those who have been convicted of a crime. The amendments: 1) limit this rule to new license applications; 2) address how to treat pleas in abeyance and reductions in level of offense; and 3) describe how this rule will operate with the federal law that requires certain convicts to obtain consent to engage in the insurance business before obtaining a license.
<b>4. Summary of the new rule or change:</b>
The changes to this rule limit this rule to new license applications, address how to treat please in abeyance and reductions in level of offense, and describe how this rule will operate with the federal law that requires certain convicts to obtain consent to engage in the insurance business before obtaining a license. It also removes the enforcement date because this rule is already in force and changes the language in the Severability section to meet current Department of Insurance (Department) standards.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget.

The amendment merely makes clarifications and does not require any new action from any party.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The amendment concerns the relationship between the Department and potential licensees and does not involve local government.

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

There is no anticipated cost or savings to small businesses. The amendment merely makes clarifications and does not require any new action from any party.

**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 amendment merely makes clarifications and does not require any new action from any party.

**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 amendment merely makes clarifications and does not require any new action from any party.

**F) Compliance costs for affected persons:**

There are no compliance costs for any affected persons. The amendment merely makes clarifications and does not require any new action from any party.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
The above analysis represents the Department's best estimate of the fiscal impact that this rule may have on businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Tanji J. Northrup, Interim Commissioner			

**Citation Information**

<b>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):</b>		
Subsection 31A-2-201(3)		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	12/15/2020

<b>10. This rule change MAY become effective on:</b>	12/22/2020
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**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer 1	<b>Date:</b>	11/02/2020
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**R590. Insurance, Administration.**

**R590-281. License Applications Submitted by Individuals Who Have a Criminal Conviction.**

**R590-281-3. Definitions.**

The following definitions shall apply for the purpose of this rule:

(1) "License" means an initial~~[-a renewal, or a reinstated]~~ resident individual or resident agency insurance license issued by the commissioner; and

(2) "Proceeding" means:

(a) a criminal proceeding in which an individual is charged with a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, including ~~one~~ a proceeding involving a plea in abeyance~~[-];~~ or

(b) a regulatory enforcement proceeding in which an individual is alleged to have engaged in conduct involving fraud, misrepresentation, theft, or dishonesty.

**R590-281-4. Eligibility to Apply for a License.**

(1) Except as provided in Subsections (2) ~~[and]~~~~through~~ ~~([3]4)~~, and except in the case of a juvenile adjudication, an individual who has been convicted of or pleaded no contest to a felony, or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty is eligible to apply for a license if:

(a) the individual has completed probation, parole, or has been released from incarceration;

(b) the individual has no criminal proceeding pending;

(c) the individual has paid in full all fines and interest ordered by the court related to the conviction;

(~~[b]~~d) the individual has paid in full all restitution ordered by the court related to the conviction; and

(~~[e]~~e) the following time periods have elapsed from the date the individual was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) seven years in the case of a felony;

(ii) five years in the case of a class A misdemeanor;

(iii) four years in the case of a class B misdemeanor; or

(iv) three years in the case of any other misdemeanor.

(2) Subsection (1) does not apply to an individual whose criminal charge was dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance.

(3) In applying this rule, the department will give effect to a conviction for a lower degree of offense pursuant to Section 76-3-402~~[An individual may not apply for a license if a proceeding is pending against the individual].~~

~~(3)4(a)(i)~~ An individual who has been convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, or who ~~has~~ is deemed under 18 U.S.C. Sec. 1033 to have been convicted of a felony involving dishonesty or breach of trust, may not apply for a license without first obtaining written consent from the commissioner to engage or participate in the business of insurance.

~~(ii) The policy and application for written consent are available on the department's website at www.insurance.utah.gov.~~

~~(b) An individual who obtains written consent may apply for a license[and]. The individual remains subject to all other license application requirements.~~

~~(c) An application for written consent is required even if:~~

~~(i) a felony charge involving dishonesty or breach of trust has been dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance; or~~

~~(ii) a felony conviction involving dishonesty or breach of trust has been reduced to a lower degree of offense pursuant to Section 76-3-402.~~

~~(4)5~~ The department will deny a license application submitted by an individual who is not eligible under this Section.

~~(6) Eligibility to apply for a license under R590-281 is a separate determination from and does not affect eligibility to engage in the business of insurance under 18 U.S.C. Sec. 1033.~~

~~R590-281-5]- Enforcement Date.~~

~~The commissioner will begin enforcing this rule when it takes effect.~~

~~R590-281-6]. Severability.~~

If any provision of this rule, ~~R590-281~~, or its application to any person or situation is held ~~[to be]invalid, [that]such~~ invalidity ~~[shall]does~~ not affect any other provision or application of this rule which can be given effect without the invalid provision or application~~[- and to this end the provisions of this rule are declared to be severable]. The remainder of this rule shall be given effect without the invalid provision or application.~~

**KEY:** insurance, licensing

**Date of Enactment or Last Substantive Amendment:** ~~[June 8,] 2020~~  
**Authorizing, and Implemented or Interpreted Law:** 31A-2-201(3)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R590-285	Filing No. 53179

**Agency Information**

<b>1. Department:</b>	Insurance
<b>Agency:</b>	Administration
<b>Room no.:</b>	3110
<b>Building:</b>	State Office Building
<b>Street address:</b>	450 N State St.
<b>City, state:</b>	Salt Lake City, UT 84114
<b>Mailing address:</b>	PO Box 146901
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901

Contact person(s):		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-285. Limited Long-Term Care Insurance
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this new rule is to adopt standards as required by Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act, which was passed during the 2020 General Session in H.B. 37, Insurance Amendments.
<b>4. Summary of the new rule or change:</b>
This rule creates standards for policy benefits; standard definitions; rate increases, including a minimum loss ratio standard; promoting premium adequacy; protecting the policyholder, including required disclosure provisions; marketing standards; independent review of benefit determinations; reporting requirements; standard outline of coverage; nonforfeiture benefits; and lapses in coverage.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The Department of Insurance's (Department) insurance analysts will assume these standards into their daily reviews.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. This rule sets standards for those insurers that want to offer a limited long-term care policy. Local governments have the option to purchase this new type of product but are not mandated to purchase it.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. This rule sets standards for those insurers that want to offer a limited long-term care policy. Small businesses have the option to purchase this new type of product but are not mandated to purchase it.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

NOTICES OF PROPOSED RULES

There is no anticipated cost or savings to non-small businesses. This rule sets standards for those insurers that want to offer a limited long-term care policy. This is an optional product that is being made available to insurers to offer to individuals and businesses. If an insurer elects to offer this product, there will be associated business costs to initiate this type of product. The Department does not have information to quantify those implementation and ongoing costs because the Department cannot know each insurer's business costs.

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

There is no anticipated cost or savings to any other persons. This rule sets standards for those insurers that want to offer a limited long-term care policy. An entity may incur costs if they elect to purchase this optional coverage.

**F) Compliance costs for affected persons:**

A limited long-term care policy is an optional product that is being made available to insurers to offer to individuals and businesses. If an insurer elects to offer this product, there will be associated business costs to initiate this type of product. The Department does not have information to quantify those implementation and ongoing costs because the Department cannot know each insurer's business costs.

**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.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Interim Commissioner of the Insurance Department, Tanji J. Northrup, 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:**

Tanji J. Northrup, Interim 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-2-203(3)(a)	Section 31A-22-2006	
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**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Appendix A. Potential Premium Increase Disclosure Form
<b>Publisher</b>	Utah Insurance Department
<b>Date Issued</b>	January 1, 2021
<b>Issue, or version</b>	Jan. 2021

<b>B) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Appendix B. Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance
<b>Publisher</b>	Utah Insurance Department
<b>Date Issued</b>	January 1, 2021
<b>Issue, or version</b>	Jan. 2021

<b>C) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
	<b>Third Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Appendix C. Notice to Applicant Regarding Replacement of Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance
<b>Publisher</b>	Utah Insurance Department
<b>Date Issued</b>	January 1, 2021
<b>Issue, or version</b>	Jan. 2021

<b>D) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
	<b>Fourth Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Appendix D. Outline of Coverage
<b>Publisher</b>	Utah Insurance Department
<b>Date Issued</b>	January 1, 2021
<b>Issue, or version</b>	Jan. 2021

<b>E) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
	<b>Fifth Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Appendix E. Replacement and Lapse Reporting Form
<b>Publisher</b>	Utah Insurance Department
<b>Date Issued</b>	January 1, 2021
<b>Issue, or version</b>	Jan. 2021

<b>F) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
	<b>Sixth Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Appendix F. Guidelines for Long-Term Care Independent Review Entities
<b>Publisher</b>	Utah Insurance Department
<b>Date Issued</b>	January 1, 2021
<b>Issue, or version</b>	Jan. 2021

**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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
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<b>10. This rule change MAY become effective on:</b>	12/22/2020
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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**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer 1	<b>Date:</b>	11/02/2020
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**R590. Insurance, Administration.**

**R590-285. Limited Long-Term Care Insurance.**

**R590-285-1. Purpose.**

The purpose of this regulation is to implement Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act, to promote the public interest, to promote the availability of limited long-term care insurance coverage, to protect applicants for limited long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of limited long-term care insurance coverages, and to facilitate flexibility and innovation in the development of limited long-term care insurance.

**R590-285-2. Authority.**

This regulation is issued pursuant to the authority vested in the commissioner under Subsection 31A-2-201(3)(a) and Section 31A-22-2006.

**R590-285-3. Applicability and Scope.**

Except as otherwise specifically provided, this regulation applies to all limited long-term care insurance policies delivered or issued for delivery in this state on or after January 1, 2021.

**R590-285-4. Definitions.**

In addition to the definitions in Sections 31A-1-301 and 31A-22-2002, the following definitions shall apply for the purpose of this rule.

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

(3) "Adult day care" means a facility duly licensed and operating within the scope of such license. An adult day care facility may not be defined more restrictively than a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Benefit trigger" for the purposes of independent review, means a contractual provision in the insured's policy of limited long-term care insurance conditioning the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.

(6) "Cognitive impairment" means a deficiency in a person's short or long-term memory; orientation as to person, place, and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.

(7) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(8) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(9) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup, or table, or by a feeding tube or intravenously.

(10) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(11) "Home care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services.

(12) "Licensed health care professional" means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured's actual functional or cognitive impairment.

(13) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law

89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(14) "Mental or nervous disorder" may not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(15) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(16) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(17)(a) "Similar policy forms" means all of the limited long-term care insurance policies and certificates issued by an insurer in the same limited long-term care benefit classification as the policy form being considered.

(b) Certificates of groups that meet the definition in Subsection 31A-22-2002(3) are not considered similar to certificates or policies otherwise issued as limited long-term care insurance, but are similar to other comparable certificates with the same limited long-term care benefit classifications.

(c) For purposes of determining similar policy forms, limited long-term care benefit classifications are defined as:

(i) institutional limited long-term care benefits only;

(ii) non-institutional limited long-term care benefits only;

or

(iii) comprehensive limited long-term care benefits.

(18) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(19) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(20) "Transferring" means moving into or out of a bed, chair, or wheelchair.

(21) "Skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility," "home care agency," and all other providers of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified, or registered, or when the state licenses, certifies, or registers the provider of services under another name.

**R590-285-5. Policy Practices and Provisions.**

(1) Renewability. The terms "guaranteed renewable" and "noncancellable" may not be used in any individual limited long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section R590-285-7.

(a) A policy issued to an individual may not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the limited long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot

decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only when the insured has the right to continue the limited long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(2)(a) Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as limited long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(i) alcoholism and drug addiction;

(ii) illness, treatment, or medical condition arising out of:

(A) war or act of war, whether declared or undeclared;

(B) participation in a felony, riot, or insurrection, when the insured is a voluntary participant;

(C) service in the armed forces or units auxiliary thereto;

(D) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury; or

(E) aviation, only to a non-fare-paying passenger;

(iii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of cognitive impairment;

(iv) preexisting conditions or diseases; and

(v) treatment provided in a government facility, unless otherwise required by law, services for which benefits are available under Medicare or other governmental program, except Medicaid, any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(b)(i) This Subsection R590-285-5(2), is not intended to prohibit exclusions and limitations by type of provider. However, no limited long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:

(A) when the state other than the state of policy issue does not have the provider licensing, certification, or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification, or registration; or

(B) when the state other than the state of policy issue licenses, certifies, or registers the provider under another name.

(ii) For purposes of this subsection, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

(iii) This subsection is not intended to prohibit territorial limitations outside of the United States.

(3) Extension of Benefits.

(a) Termination of limited long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the limited long-term care insurance was in force and continues without interruption after termination.

(b) The extension of benefits beyond the period the limited long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or Conversion.

(a) Group limited long-term care insurance issued in this state shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this Subsection R590-285-5(4):

(i) "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity;

(ii) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability; and

(iii) "converted policy" means an individual policy of limited long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(d) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(e) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(i) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(ii) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage;

(A) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(B) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-285-5(4)(d).

(f) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another limited long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(g) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(h) Notwithstanding any other provision of this section, an insured individual whose eligibility for group limited long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5) Discontinuance and Replacement. If a group limited long-term care policy is replaced by another group limited long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) may not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of limited long-term care services.

(6) Premium Changes.

(a) The premium charged to an insured may not increase due to either:

(i) the increasing age of the insured at age 66 or older; or

(ii) the duration the insured has been covered under the policy.

(b) The purchase of additional coverage may not be considered a premium rate increase, but for purposes of the calculation required under Section R590-285-22, the portion of the premium attributable to the additional coverage shall be added to, and considered part of, the initial annual premium.

(c) A reduction in benefits may not be considered a premium change, but for purposes of the calculation required under Section R590-285-22, the initial annual premium shall be based on the reduced benefits.

(7) Electronic Enrollment for Group Policies.

(a) In the case of a group defined in Subsection 31A-22-2002(3), any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records; and

(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and privileged information is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

**R590-285-6. Unintentional Lapse.**

Each insurer offering limited long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination.

(i) No individual limited long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

(ii) The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured.

(iii) Designation may not constitute acceptance of any liability on the third party for services provided to the insured.

(iv) The form used for the written designation must provide space clearly designated for listing at least one person.

(v) The designation shall include each person's full name and home address.

(vi) In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this limited long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(vii) The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

(b) When the policyholder or certificateholder pays premium for a limited long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection R590-285-6(1) need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

(i) No individual limited long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-285-6(1), at the address provided by the insured for purposes of receiving notice of lapse or termination.

(ii) Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid.

(iii) Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement.

(a) In addition to the requirement in Subsection R590-285-6(1), a limited long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(b) This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate.

(c) The standard of proof of cognitive impairment or loss of functional capacity may not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

**R590-285-7. Required Disclosure Provisions.**

(1) Renewability. Individual limited long-term care insurance policies shall contain a renewability provision.

(a) The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable.

(b) A limited long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and Endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual limited long-term care insurance policy, all riders or endorsements added to an individual limited long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of Benefits. A limited long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(4) Limitations. If a limited long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other Limitations or Conditions on Eligibility for Benefits. A limited long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Subsection 31A-22-2004(3)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Benefit Triggers.

(a) Activities of daily living and cognitive impairment shall be used to measure an insured's need for limited long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section.

(b) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(c) If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

**R590-285-8. Required Disclosure of Rating Practices to Consumers.**

(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-285-8(2), this section applies to any limited long-term care policy or certificate issued in this state on or after July 1, 2021.

(b) For certificates issued on or after the effective date of this regulation under a group limited long-term care insurance policy as defined in Subsection 31A-22-2002(3), which policy was in force at the time this regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2022.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future.

(b) An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's options in the event of a premium rate revision.

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e. g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-285-8(2)(c) if the premium rate or rate schedule is changed.

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the limited

long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a limited long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers, on or before the later of the effective date of this section, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-285-8(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-285-8(2)(e)(iv) files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-285-8(2)(e)(iv), the acquiring insurer shall make all disclosures required by R590-285-8(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-285-8(2)(e)(iv).

(3) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsection R590-285-8(2)(a) and (e). If, due to the method of application, the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the form in Appendix A to comply with the requirements of Subsections R590-285-8(2) and (3).

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-285-8(2) when the rate increase is implemented.

**R590-285-9. Initial Filing Requirements.**

(1) This section applies to any limited long-term care policy issued in this state on or after July 1, 2021.

(2) An insurer shall provide the information listed in this subsection to the commissioner prior to making a limited long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in Section R590-285-8;

(b) a complete rate schedule; and

(c) an actuarial memorandum that shall include:

(i) a statement regarding actuary's qualifications;

(ii) an explanation of the review performed by the actuary;

(iii) complete description of all pricing assumptions, including sources and credibility of data;

(iv) development of the anticipated lifetime loss ratio supported by an exhibit showing lifetime projection of earned premiums and incurred claims based upon the pricing assumptions;

(v) a statement that the premium rate schedule is expected to result in a lifetime loss ratio not less than 55%;

(vi) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(vii) a statement that the underwriting and claim adjudication processes have been reviewed and taken into consideration;

(viii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including sensitivity to the mix of business;

(ix) a statement that the reserve requirements have been reviewed and taken in consideration;

(x) a description of the valuation assumptions with sufficient detail or sample calculation as to have a complete depiction of the reserve amounts to be held;

(xi) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and

(xii) an actuarial certification dated and signed by the qualified actuary that all information presented in the actuarial memorandum is accurate and complete.

(3) Retention Requirements.

(a) An insurer offering a limited long-term care policy shall retain sufficient documentation from the initial pricing that a qualified actuary could recreate the initial rates at a later date.

(i) The documentation shall be sufficient to provide actual to expected analyses of:

(A) claims;

(B) incidence rates;

(C) persistency;

(D) mix of business; and

(E) loss ratios at the same level of detail used in the initial pricing.

(ii) If an insurer retains a consultant to price a limited long-term care product, the insurer shall require that the documentation be provided to the insurer, rather than being retained solely by the consultant.

(iii) If an insurer sells or cedes complete risk responsibility for a limited long-term care product, the insurer or cedant shall provide to the buyer or reinsurer the initial pricing documentation.

(b) An insurer that requests a future premium rate schedule increase but has not retained the initial pricing documentation shall be limited to a lifetime loss ratio not less than 80%.

(c) The insurer shall retain the initial pricing documentation at least until one year after the final policyholder is no longer eligible for benefits under the policy.

**R590-285-10. Prohibition Against Post-Claims Underwriting.**

(1) All applications for limited long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for limited long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) Except for policies or certificates that are guaranteed issue:

(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a limited long-term care insurance policy or certificate: "Caution: If your answers on this application are incorrect

or untrue, (insert name of insurer) has the right to deny benefits or rescind your policy"; and

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the limited long-term care insurance policy or certificate at the time of delivery: "Caution: The issuance of this limited long-term care insurance (insert either policy or certificate) is based upon your responses to the questions on your application. A copy of your (insert either application or enrollment form) (insert either is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)."

(c) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

**R590-285-11. Minimum Standards for Home and Community Care Benefits in Limited Long-Term Care Insurance Policies.**

(1) A limited long-term care insurance policy or certificate may not, if it provides benefits for home care or community care services, limit or exclude benefits:

(a) by requiring that the insured or claimant would need care in a skilled nursing facility if home care services were not provided;

(b) by requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home care services are covered;

(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home care services be at a level of certification or licensure greater than that required by the eligible service;

(g) by requiring that the insured or claimant have an acute condition before home care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) by excluding coverage for adult day care services.

(2) A limited long-term care insurance policy or certificate, if it provides for home or community care services, shall provide total home or community care coverage that is a dollar amount equivalent to at least one-half of the coverage available for nursing home benefits under the policy or certificate, at the time covered home or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home care coverage may be applied to the non-home care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

**R590-285-12. Requirement to Offer Inflation Protection.**

(1) No insurer may offer a limited long-term care insurance policy unless the insurer also offers to the policyholder, in addition

to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of limited long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner that the increases are compounded annually at a rate not less than 3%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 3% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, the required offer in Subsection R590-285-12(1) shall be made to the group policyholder and to each proposed certificateholder.

(3)(a) An insurer shall include the following information in or with the outline of coverage:

(i) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period; and

(ii) any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-285-12(1)(a) shall be included in a limited long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_, and I reject inflation protection."

**R590-285-13. Requirements for Application Forms and Replacement Coverage.**

(1) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another limited long-term care insurance policy or long-term care insurance policy, or certificate in force, or whether a limited long-term care policy, or long-term care insurance policy, or certificate is intended to replace any other accident and sickness, or limited long-term care policy, or long-term

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care insurance policy, or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing the questions may be used, except where the coverage is sold without an agent. With regard to a replacement policy issued to a group, the following questions may be modified only to the extent necessary to elicit information about health or limited long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement.

(a) Do you have another limited long-term care insurance policy, or long-term care insurance policy, or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another limited long-term care insurance policy, or long-term care insurance policy, or certificate in force during the last twelve (12) months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

(2) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold that are still in force.

(b) List policies sold in the past five years that are no longer in force.

(3) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or limited long-term care or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

(a) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. Notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(b) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods or its agent, shall furnish the applicant, prior to issuance or delivery of the individual limited long-term care insurance policy, a notice regarding replacement of accident and sickness or limited long-term care or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner described in Appendix B.

**R590-285-14. Reporting Requirements.**

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of limited long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) Every insurer shall report annually by June 30 the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-285-14(1).

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more

closely agent activities regarding the sale of limited long-term care insurance.

(4) Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. Refer to Appendix E.

(5) Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. Refer to Appendix E.

(6) For purposes of this section:

(a) "Policy" means only limited long-term care insurance.

(b) "Report" means on a statewide basis.

(7) Reports required under this section shall be filed with the commissioner.

(8) Annual rate certification requirements.

(a) This subsection applies to any limited long-term care policy issued in this state on or after January 1, 2021.

(b) The following annual submission requirements apply subsequent to initial rate filings for individual limited long-term care insurance policies made under this section.

(c) An actuarial certification prepared, dated and signed by a qualified actuary who provides the information shall be included and shall provide at least the following information:

(i) a statement of the sufficiency of the current premium rate schedule;

(ii) for the rate schedules that are no longer marketed;

(A) that the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions; or

(B) that the premium rate schedule may no longer be sufficient. In this situation, the insurer shall provide to the commissioner, within 60 days of the date the actuarial certification is submitted to the commissioner, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience; and

(iii) a description of the review performed that led to the statement.

(d) An actuarial memorandum dated and signed by a qualified actuary who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:

(i) a detailed explanation of the data sources and review performed by the actuary prior to making the statement;

(ii) a complete description of experience assumptions and their relationship to the initial pricing assumptions;

(iii) a description of the credibility of the experience data; and

(iv) an explanation of the analysis and testing performed in determining the current presence of margins.

(e) The actuarial certification required pursuant to Subsection R590-285-14(8)(c) must be based on calendar year data and submitted annually no later than May 1 of each year, starting in the second year following the year in which the initial rate schedules are first used. The actuarial memorandum required pursuant to R590-285-14(8)(d) must be submitted at least once every three years with the certification.

**R590-285-15. Premium Rate Schedule Increases.**

(1) This section applies to any limited long-term care policy or certificate issued in this state, on or after January 1, 2021.

(2) No rate increase may be requested by an insurer until the projected lifetime loss ratio, under best estimate assumptions, exceeds the anticipated lifetime loss ratio plus 2%.

(3) An insurer shall provide notice of a pending premium rate schedule increase to the commissioner prior to the notice to the policyholders and shall include:

- (a) a revised rate schedule;
  - (b) an actuarial memorandum that shall include:
    - (i) a statement regarding the actuary's qualifications;
    - (ii) an explanation of the review performed by the actuary;
    - (iii) complete description of all pricing assumptions and any changes from the initial and any prior filing;
    - (iv) an exhibit showing policy count, actual incurred claims, and earned premiums by duration both on a state and nationwide basis, and any revised projections based on the revised pricing assumptions;
    - (v) an exhibit showing actual to expected loss ratios by duration;
    - (vi) a statement that the revised premium schedule is expected to result in a lifetime loss ratio not less than 55%;
    - (vii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including any revised assumptions, including sensitivity to the mix of business;
    - (viii) a description of the valuation assumptions, including any revisions since the initial and any prior filing, with sufficient detail or sample calculation to have a complete depiction of the reserve amounts to be held; and
    - (ix) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such statement cannot be made, a complete description of the situation where this does not occur; and
  - (c) an actuarial certification dated and signed by the actuary that all information presented in the actuarial memorandum is accurate and complete.
- (4) An insurer that is granted a premium rate schedule increase shall retain similar documentation related to the rate increase request as is required in Section R590-285-9(3).

#### **R590-285-16. Filing Requirements for Advertising.**

(1) Every insurer providing limited long-term care insurance or benefits in this state shall provide a copy of any limited long-term care insurance advertisement intended for use or used in this state, whether through written, radio, or television medium to the commissioner, for review or approval by the commissioner, when requested.

(2) All advertisements shall be retained for at least three years from the date the advertisement was first used.

#### **R590-285-17. Standards for Marketing.**

(1) Every insurer or other entity marketing limited long-term care insurance coverage in this state, directly or through a producer, shall:

- (a)(i) establish marketing procedures and training requirements to assure that:
  - (ii) any marketing activities, including any comparison of policies, by its producers will be fair and accurate; and
  - (b) excessive insurance is not sold or issued;
  - (c) display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with limited long-term care incurred by the

buyer during the period of coverage. The buyer is advised to review carefully all policy limitations";

(d) provide copies of the disclosure form required in Appendix A to the applicant;

(e) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for limited long-term care or long-term care insurance already has accident and sickness or limited long-term care insurance and the types and amounts of any such insurance;

(f) establish auditable procedures for verifying compliance with Subsection R590-285-17(1);

(g) use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsection R590-285-5(1)(c) or (d), as applicable; and

(h) provide an explanation of contingent benefit upon lapse provided for in Subsection R590-285-22(4).

(2) In addition to the practices prohibited in Section 31A-23a-402, the following acts and practices are prohibited.

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy, or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of, or tending to induce the purchase of, insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase, or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a limited long-term care insurance policy.

(3)(a) An insurer offering a limited long-term care policy to an association, shall require the association:

(i) when endorsing or selling limited long-term care insurance to educate its members concerning limited long-term care issues in general so that its members can make informed decisions;

(ii) to provide objective information regarding limited long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold; and

(iii) disclose in any limited long-term care insurance solicitation:

(A) the specific nature and amount of the compensation arrangements, including all fees, commissions, administrative fees, and other forms of financial support, that the association receives from endorsement or sale of the policy or certificate to its members; and

(B) a brief description of the process under which the policies and the insurer issuing the policies were selected.

(b) If the association and the insurer have interlocking directorates or trustee arrangements, the insurer shall require the association to disclose that fact to its members.

(c) The insurer shall require the board of directors of associations selling or endorsing limited long-term care insurance policies or certificates to review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(d) The insurer shall also:

(i) actively monitor the marketing efforts of the association and any producer; and

(ii) review and approve all marketing materials or other insurance communications used to promote sales or marketing sent to members, regarding the policies or certificates.

(e) The insurer may not issue a limited long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.

(f) An insurer's failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of Section 31A-23a-402.

**R590-285-18. Suitability.**

(1) An insurer marketing limited long-term care insurance shall:

(a) develop and use suitability standards and procedures to determine whether the purchase or replacement of limited long-term care insurance is appropriate for the needs of the applicant;

(b) include in its suitability standards and procedures:

(i) consideration of the advantages and disadvantages of insurance to meet the needs of the applicant; and

(ii) discussion with applicants of how the benefits and costs of limited long-term care insurance compare with long-term care insurance;

(c) train its producers in its suitability standards and procedures; and

(d) maintain a copy of its suitability standards and procedures and make them available for inspection upon request by the commissioner.

(2) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

**R590-285-19. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates.**

If a limited long-term care insurance policy or certificate replaces another limited long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new limited long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

**R590-285-20. Availability of New Services or Providers.**

(1) An insurer shall notify policyholders of the availability of any new limited long-term policy series that provides coverage for new limited long-term care services or new providers material in nature not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date that the new policy series is made available for sale in this state.

(2) Notwithstanding Subsection R590-285-20(1), notification is not required for any policy issued prior to the effective date of this rule or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under

the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(3) The insurer shall make the new coverage available in one of the following ways:

(a) by adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) by exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

(c) by exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(d) by an alternative program developed by the insurer that meets the intent of this section.

(4) An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders who purchased such a new proprietary policy shall be notified when a new limited long-term care policy series that provides coverage for new limited long-term care services or new providers material in nature and were not previously available to that limited distribution channel.

(5) Policies issued pursuant to this Section R590-285-20 shall be considered exchanges and not replacements. These exchanges may not be subject to Sections R590-285-13 and R590-285-19, and the reporting requirements of Subsections R590-285-14(1) through (5).

(6) Where the policy is offered through an employer, labor organization, professional, trade, or occupational association, the required notification in Subsection R590-285-20(1) shall be made to the offering entity. However, if the policy is issued to a group under Subsection 31A-22-701(2)(b) or (c), the notification shall be made to each certificateholder.

(7) Nothing in this section shall prohibit an insurer from offering any policy, rider, certificate, or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(8) This section does not apply to life insurance policies or riders containing accelerated limited long-term care benefits.

(9) This section shall become effective on policies issued on or after January 1, 2021.

**R590-285-21. Right to Reduce Coverage and Lower Premiums.**

(1)(a) Every limited long-term care insurance policy and certificate shall include a provision that allows the policyholder or

certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

(i) reducing the maximum benefit; or

(ii) reducing the daily, weekly, or monthly benefit amount.

(b) The insurer may also offer other reduction options that are consistent with the policy or certificate design, or the insurer's administrative processes.

(c) In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.

(2) The provision shall include a description of the process for requesting and implementing a reduction in coverage.

(3) The premium for the reduced coverage shall:

(a) be based on the same age and underwriting class used to determine the premium for the coverage currently in force; and

(b) be consistent with the approved rate table.

(4) The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(5) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of the policyholder's or certificateholder's right to reduce coverage and premiums in the notice required by Subsection R590-285-6(1)(c) of this regulation.

(6) The requirements of Subsections R590-285-21(1) through (5) shall apply to any limited long-term care policy issued in this state on or after January 1, 2022.

(7)(a) A premium increase notice required by Subsection R590-285-8(5) shall include:

(i) an offer to reduce policy benefits provided by the current coverage consistent with the requirements of this section; and

(ii) a disclosure stating that all options available to the policyholder may not be of equal value.

(b) The requirements of this Subsection R590-285-21(7) shall apply to any rate increase implemented in this state on or after January 1, 2022.

#### **R590-285-22. Nonforfeiture Benefit Requirement.**

(1) To comply with the option to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-2005:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-285-22(4); and

(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(2) Should the offer made under Section 31A-22-2005 be rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in Subsection R590-285-22(3)(d) shall still apply.

(3)(a) After rejection of the offer made under Section 31A-22-2005, for individual and group policies without nonforfeiture benefits, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding 50% of the insured's initial annual premium. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.

(d) On or before the effective date of a substantial premium increase as defined in R590-285-22(3)(c), the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage consistent with the requirements of Section R590-285-21 so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-285-22(4). This option may be elected at any time during the 45-day period referenced in Subsection R590-285-22(3)(c); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 45-day period referenced in Subsection R590-285-22(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-285-22(3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with Subsection R590-285-22(3)(c), are described in this subsection.

(a) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up limited long-term care insurance coverage after lapse. The same benefits, amounts, and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-285-22(4)(c).

(b) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-285-22(5).

(c) The nonforfeiture benefit shall begin no later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(d) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(6) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(7) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-285-22(3)(c) or (d), a replacing insurer that purchased or otherwise assumed a block or blocks of limited long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

#### **R590-285-23. Standards for Benefit Triggers.**

(1) A limited long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive

impairment. Eligibility for the payment of benefits may not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(2)(a) Activities of daily living shall include at least the following as defined in Subsection R590-285-4(1) and in the policy:

(i) bathing;

(ii) continence;

(iii) dressing;

(iv) eating;

(v) toileting; and

(vi) transferring.

(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-285-23(2)(a) as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however, the provisions may not restrict, and are not in lieu of, the requirements contained in Subsections R590-285-23(1) and (2).

(4) For purposes of this section, the determination of a deficiency may not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(6) Limited long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

**R590-285-24. Appealing an Insurer's Determination That the Benefit Trigger is Not Met.**

(1) For purposes of this section, "authorized representative" is authorized to act as the covered person's personal representative within the meaning of 45 CFR 164.502(g) promulgated by the Secretary under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act and means the following:

(a) a person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) a person authorized by law to provide substituted consent for a covered person; or

(c) a family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.

(2) If an insurer determines that the benefit trigger of a limited long-term care insurance policy has not been met, it shall provide a clear, written notice to the insured and the insured's authorized representative, if applicable, of all of the following:

(a) the reason that the insurer determined that the insured's benefit trigger has not been met;

(b) the insured's right to internal appeal in accordance with Subsection R590-285-24(3), and the right to submit new or additional information relating to the benefit trigger denial with the appeal request; and

(c) the insured's right, after exhaustion of the insurer's internal appeal process, to have the benefit trigger determination

reviewed under the independent review process in accordance with Section R590-285-25.

(3) Internal Appeal.

(a) The insured or the insured's authorized representative may appeal the insurer's adverse benefit trigger determination by sending a written request to the insurer, along with any additional supporting information, within 180 days after the insured and the insured's authorized representative, if applicable, receives the insurer's benefit determination notice.

(b) The internal appeal shall be considered by an individual or group of individuals designated by the insurer, provided that the individual or individuals making the internal appeal decision may not be the same individual or individuals who made the initial benefit determination.

(c) The internal appeal shall be completed, and written notice of the internal appeal decision shall be sent to the insured and the insured's authorized representative, if applicable, within 30 calendar days of the insurer's receipt of all necessary information upon which a final determination can be made.

(d) If the insurer's original determination is upheld after the internal appeal process has been exhausted and new or additional information has not been provided to the insurer, the insurer shall provide a written description of the insured's right to request an independent review of the benefit determination as described in Section R590-285-25 to the insured and the insured's authorized representative, if applicable.

(e) As part of the written description of the insured's right to request an independent review, an insurer shall include the following, or substantially equivalent, language: "We have determined that the benefit eligibility criteria ("benefit trigger") of your (policy) (certificate) has not been met. You may have the right to an independent review of our decision conducted by long-term care professionals who are not associated with us. Please send a written request for independent review to us at (address). You must inform us, in writing, of your election to have this decision reviewed within 180 days of receipt of this letter. We will choose an independent review organization for you and refer the request for independent review to it."

(f) If the insurer does not believe the benefit trigger decision is eligible for independent review, the insurer shall inform the insured and the insured's authorized representative, if applicable, in writing and include in the notice the reasons for its determination of independent review ineligibility.

(g) The appeal process is not deemed to be a "new service or provider" as referenced in Section R590-285-20 and therefore does not trigger the notice requirements of that section.

**R590-285-25. Independent Review of Benefit Trigger Determination.**

(1) Request. The insured or the insured's authorized representative may request an independent review of the insurer's benefit trigger determination after the internal appeal process outlined in Subsection R590-285-24(3) has been exhausted. A written request for independent review may be made by the insured or the insured's authorized representative to the insurer within 180 days after the insurer's written notice of the final internal appeal decision is received by the insured and the insured's authorized representative, if applicable.

(2) Cost. The cost of the independent review shall be borne by the insurer.

(3) Independent Review Process.

(a) Within five business days of receiving a written request for independent review, the insurer shall refer the request to the independent review organization. The insurer shall choose an independent review organization approved by the commissioner. The insurer shall vary its selection of authorized independent review organizations on a rotating basis.

(b) The insurer shall refer the request for independent review of a benefit trigger determination to an independent review organization, subject to the following:

(i) the independent review organization shall be on a list of approved independent review organizations that satisfy the requirements of a qualified long-term care insurance independent review organization contained in this section;

(ii) the independent review organization may not have any conflicts of interest with the insured, the insured's authorized representative, if applicable, or the insurer; and

(iii) such review shall be limited to the information or documentation provided to and considered by the insurer in making its determination, including any information or documentation considered as part of the internal appeal process.

(c) If the insured or the insured's authorized representative has new or additional information not previously provided to the insurer, whether submitted to the insurer or the independent review organization, such information shall first be considered in the internal review process, as set forth in Subsection R590-285-24(3).

(i) While this information is being reviewed by the insurer, the independent review organization shall suspend its review and the time period for review is suspended until the insurer completes its review.

(ii) The insurer shall complete its review of the information and provide written notice of the results of the review to the insured and the insured's authorized representative, if applicable, and the independent review organization within five business days of the insurer's receipt of such new or additional information.

(iii)(A) If the insurer maintains its denial after such review, the independent review organization shall continue its review, and render its decision within the time period specified in Subsection R590-285-25(3)(i).

(B) If the insurer overturns its decision following its review, the independent review request shall be considered withdrawn.

(d) The insurer shall acknowledge in writing to the insured and the insured's authorized representative, if applicable, and the commissioner that the request for independent review has been received, accepted, and forwarded to an independent review organization for review. Such notice will include the name and address of the independent review organization.

(e) Within five business days of receipt of the request for independent review, the independent review organization assigned shall notify the insured and the insured's authorized representative, if applicable, and the insurer, that it has accepted the independent review request and identify the type of licensed health care professional assigned to the review. The assigned independent review organization shall include in the notice a statement that the insured or the insured's authorized representative may submit in writing to the independent review organization, within seven days following the date of receipt of the notice, additional information and supporting documentation that the independent review organization should consider when conducting its review.

(f) The independent review organization shall review all of the information and documents that are provided to the independent review organization. The independent review organization shall

provide copies of any documentation or information provided by the insured or the insured's authorized representative to the insurer for its review, if it is not part of the information or documentation submitted by the insurer to the independent review organization. The insurer shall review the information and provide its analysis of the new information in accordance with Subsection R590-285-25(3)(h).

(g) The insured or the insured's authorized representative may submit, at any time, new or additional information not previously provided to the insurer but that is pertinent to the benefit trigger denial. The insurer shall consider such information and affirm or overturn its benefit trigger determination. If the insurer affirms its benefit trigger determination, the insurer shall promptly provide such new or additional information to the independent review organization for its review, along with the insurer's analysis of such information.

(h) If the insurer overturns its benefit trigger determination:

(i) the insurer shall provide notice to the independent review organization, the insured, and the insured's authorized representative, if applicable, of its decision; and

(ii) the independent review process shall immediately cease.

(i) The independent review organization shall provide the insured and the insured's authorized representative, if applicable, and the insurer written notice of its decision, within 30 days from receipt of the referral. If the independent review organization overturns the insurer's decision, it shall:

(i) establish the precise date within the specific period of time under review that the benefit trigger was deemed to have been met; and

(ii) specify the specific period of time under review for which the insurer declined eligibility, but during which the independent review organization deemed the benefit trigger to have been met.

(j) The decision of the independent review organization with respect to whether the insured met the benefit trigger will be final and binding on the insurer.

(k) The independent review organization's determination shall be used solely to establish liability for benefit trigger decisions, and is intended to be admissible in any proceeding only to the extent it establishes the eligibility of benefits payable.

(l) Nothing in this section shall restrict the insured's right to submit a new request for benefit trigger determination after the independent review decision, should the independent review organization uphold the insurer's decision.

(m)(i) The commissioner shall utilize the criteria set forth in Appendix F, Guidelines for Long-Term Care Independent Review Entities, in approving entities to review long-term care insurance benefit trigger decisions.

(ii) The commissioner shall accept another state's certification of an independent review organization, provided such state requires the independent review organization to meet substantially similar qualifications as those contained in Appendix F.

(n) The commissioner shall maintain and periodically update a list of approved independent review organizations.

(4) Certification of Long-Term Care Insurance Independent Review Organizations. The commissioner shall certify or approve a qualified long-term care insurance independent review organization, provided the independent review organization demonstrates to the satisfaction of the commissioner that it is unbiased and meets the following qualifications:

(a) have on staff, or contract with, a qualified and licensed health care professional in an appropriate field for determining an

NOTICES OF PROPOSED RULES

insured's functional or cognitive impairment such as physical therapy, occupational therapy, neurology, physical medicine, and rehabilitation, to conduct the review;

(b) neither it nor any of its licensed health care professionals may, in any manner, be related to or affiliated with an entity that previously provided medical care to the insured;

(c) utilize a licensed health care professional who is not an employee of the insurer or related in any manner to the insured;

(d) neither it nor its licensed health care professional who conducts the reviews may receive compensation of any type that is dependent on the outcome of the review;

(e) be approved by the commissioner to conduct such reviews if the state requires such approvals or certifications;

(f) provide a description of the fees to be charged by it for independent reviews of a limited long-term care insurance benefit trigger decision. Such fees shall be reasonable and customary for the type of limited long-term care insurance benefit trigger decision under review; and

(g) provide the name of the medical director or health care professional responsible for the supervision and oversight of the independent review procedure.

(5) Maintenance of Records and Reporting Obligations by Independent Review Organizations. Each certified independent review organization shall comply with the following:

(a) maintain written documentation establishing the date it receives a request for independent review, the date each review is conducted, the resolution, the date such resolution was communicated to the insurer and the insured, the name and professional status of the reviewer conducting such review in an easily accessible and retrievable format for the year in which it received the information, plus three calendar years;

(b) be able to document measures taken to appropriately safeguard the confidentiality of such records and prevent unauthorized use and disclosures in accordance with applicable federal and state law;

(c) report annually to the commissioner, by June 1 for the previous calendar year, in the aggregate and for each limited long-term care insurer all of the following:

(i) the total number of requests received for independent review of limited long-term care benefit trigger decisions;

(ii) the total number of reviews conducted and the resolution of such reviews;

(iii) the number of reviews withdrawn prior to review; and

(iv) the percentage of reviews conducted within the prescribed timeframe set forth in Subsection R590-285-25(3)(i); and

(d) report immediately to the commissioner any change in its status which would cause it to cease meeting any of the qualifications required of an independent review organization performing independent reviews of limited long-term care benefit trigger decisions.

(6) Additional Rights. Nothing contained in this section shall limit the ability of an insurer to assert any rights an insurer may have under the policy related to:

(a) an insured's misrepresentation;

(b) changes in the insured's benefit eligibility; and

(c) terms, conditions, and exclusions of the policy, other than failure to meet the benefit trigger.

**R590-285-26. Standard Format Outline of Coverage.**

(1) The outline of coverage shall be substantially similar to Appendix D.

(2) The outline of coverage shall be a free-standing document, using no smaller than ten-point type.

(2) The outline of coverage shall contain no material of an advertising nature.

(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

**R590-285-27. Documents Incorporated by Reference.**

(1) Appendix A. Potential Premium Increase Disclosure Form, January 2021 revision.

(2) Appendix B. Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance, January 2021 revision.

(3) Appendix C. Notice to Applicant Regarding Replacement of Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance, January 2021 revision.

(4) Appendix D. Outline of Coverage, January 2021 revision.

(5) Appendix E. Replacement and Lapse Reporting Form, January 2021 revision.

(6) Appendix F. Guidelines for Long-Term Care Independent Review Entities, January 2021 revision.

**R590-285-28. Effective Date.**

The commissioner will begin enforcing the provisions of this rule on January 1, 2021.

**R590-285-29. Severability.**

If any provision of this rule, R590-285, 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: insurance, health, long-term care**  
**Date of Enactment or Last Substantive Amendment: 2020**  
**Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a), 31A-22-2006**

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R612-100-3</b>	<b>Filing No. 53180</b>

**Agency Information**

<b>1. Department:</b>	Labor Commission
<b>Agency:</b>	Industrial Accidents
<b>Room no.:</b>	3rd Floor
<b>Building:</b>	Heber M. Wells Bldg.
<b>Street address:</b>	160 E 300 S
<b>City, state:</b>	Salt Lake City, UT 84111

<b>Mailing address:</b> PO Box 146600		
<b>City, state, zip:</b> Salt Lake City, UT 84114-6600		
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ron Dressler	801-530-6841	rdressler@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R612-100-3. Forms Used By Industrial Accidents Division
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of the rule change is to reorganize the listing of forms used in workers' compensation processes.
<b>4. Summary of the new rule or change:</b>
This rule incorporates new forms and deletes old forms pursuant to the implementation of the Division of Industrial Accidents' (Division) electronic interchange system. This allows information to be shared electronically by insurance carriers with regard to claims, but still allows forms to be filed by uninsured or self-insured employers. The new language also organizes the forms numerically.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget since the rule change simply clarifies and reorganizes the existing rule.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments since the rule change simply clarifies and reorganizes the existing rule.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses since the rule change simply clarifies and reorganizes the existing rule.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses since the rule change simply clarifies and reorganizes the existing rule.

**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 persons other than small businesses, non-small businesses, state, or local government entities since the rule change simply clarifies and reorganizes the existing rule.

**F) Compliance costs for affected persons:**

There will be no compliance costs since the rule change simply clarifies and reorganizes the existing 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**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Labor Commission, Jaceson R. Maughan, has reviewed and approved the fiscal analysis.

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

There should be no fiscal impact on businesses since the rule change simply clarifies and reorganizes the existing rule.

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

Jacson R. Maughan, 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 34A-2-101 et seq.	Section 34A-3-101 et seq.	Section 34A-1-104 et seq.
Section 63G-4-102 et seq.		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. 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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
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<b>10. This rule change MAY become effective on:</b>	12/22/2020
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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**

<b>Agency head or designee, and title:</b>	Jacson R. Maughan, Commissioner	<b>Date:</b>	11/02/2020
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**R612. Labor Commission, Industrial Accidents. R612-100. Workers' Compensation Rules - General Provisions. [R612-100-3. Forms Used By Industrial Accidents Division.**

~~A. Physician's Initial Report of Work Injury Or Occupational Disease Form 123. This form is used by physicians to report initial treatment of injured employees as required by Subsection R612-300-~~

~~4.A. This form must be completed by the physician for any treatment for which a bill is generated, and for any treatment beyond "first aid" as that term is defined in Section R612-100-2.~~

~~B. Restorative Services Authorization Forms 221a (Spine), 221b (Upper Extremity), and 221c (Lower Extremity). These forms must be used by any medical provider billing under the "Restorative Services" provisions of Subsection R612-300-5.G.~~

~~C. Statement of Benefits Paid by Insurance Carrier or Uninsured Employer Form 141. This form is used by insurance carriers and uninsured employers to report the initial benefits paid to a claimant as required by Subsection R612-200-1.C.1.e.~~

~~D. Employee Notification of Denial of Claim Form 089. This form is used by insurance carriers or uninsured employers, as required by Subsection R612-200-1.C.1.b. to notify a claimant of the reasons that the claim has been denied.~~

~~E. Statement of Suspension of Benefits Form 142. An insurance carrier or uninsured employer must use this form to notify a claimant if disability compensation benefits are to be suspended. The form must specify the reason for suspension. The form shall be mailed to the employee and filed with the Division five days before the suspension occurs. Suspension of benefits shall not occur until 5 days after the form is mailed and filed.~~

~~F. Final Report of Injury and Statement of Losses Form 130. This form is used by insurance carriers and uninsured employers to report the total losses occurring in each claim. This form must be filed with the Division within 30 days from closure of each claim and shall include all payments, including medical, disability compensation, dependent's benefits, and any other payments.~~

~~G. Dependents' Benefit Order Form 151. This form is used by the Division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the Division.~~

~~H. Medical Information Authorization Form 046. This form is used to release the applicant's medical records for use by the Commission or its subdivisions.~~

~~I. Application to Change Doctors Form 102. This form must be submitted by an injured worker seeking to change physicians as provided by Subsection R612-300-2.D.3.~~

~~J. Notice of Intent to Leave State Form 044. As required by Subsection R612-300-2.F. an injured worker must submit this form, together with Form 043, "Attending Physician's Statement," to the Division prior to the injured worker's change of residency from Utah to another locale.~~

~~K. Attending Physician's Statement Form 043. As required by Subsection R612-300-2.F., this form must be completed by an injured worker and his Utah attending physician and then submitted to the Division with Form 044 before the injured worker changes residency from Utah to another locale.~~

~~L. Statement of Compensation Form 219. As required by Section R612-200-5, insurance carriers and uninsured employers shall use this form to notify injured workers or dependents of the basis upon which compensation has been computed.~~

~~M. Request for Copies from Claimant's File Form 205. This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.~~

~~N. Reemployment Program Forms.~~

~~1. "Initial Assessment Report Form 206" This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant~~

demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" This form is submitted to the Division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" This form is completed by rehabilitation providers who wish to be certified by the Division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" This form is used by the Division to summarize the outcome of the administrative review.

O. Medical Records - Form 302. This form is used by a claimant to request a free copy of his or her medical records from a medical provider. This form must be signed by a staff member of the Division.]

### **R612-100-3. Forms Used By Industrial Accidents Division.**

A. Attending Physician's Statement - Form 043. This form must be completed by an injured worker and his Utah attending physician and then submitted to the Division with Form 044 before the injured worker changes residency from Utah to another locale as required by Subsections R612-300-2.F. and R612-300-3.C.

B. Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044. An injured worker must submit this form, together with Form 043, "Attending Physician's Statement," to the Division prior to the injured worker's change of residency from Utah to another locale as required by Subsections R612-300-2.F. and R612-300-3.C.

C. Employee Notification of Denial of Claim - Form 089. This form is used by insurance carriers or self-insured employers to notify a claimant of the reasons that the claim has been denied as required by Subsection R612-200-1.C.1.b.

D. Injured Workers' Rights and Responsibilities -- Form 100. This form is used by insurance carriers and employers to inform the injured worker of their rights and responsibilities as required by Subsection 34A-2-407(6)(b).

E. Application to Change Doctors - Form 102. This form must be submitted by an injured worker seeking to change physicians under Subsection R612-300-2.D.3.

F. Application for Self-Insurance -- Form 109. This form is submitted by an employer seeking to become self-insured under Subsection 34A-2-201.5.

G. First Report of Injury or Illness -- Forms 122C and 122E. Form 122C is used by the insurance carrier or self-insured employer to

report an injury to the injured worker. Form 122E is used by the employer to report an injury to the injured worker and its insurance carrier or the Division, if uninsured. These forms are required by Subsection 34A-2-407(5).

H. Physician's Initial Report of Work Injury Or Occupational Disease - Form 123. This form is used by physicians to report initial treatment of injured employees as required by Subsection R612-300-3.A. This form must be completed by the physician for any treatment for which a bill is generated, and for any treatment beyond "first aid" as that term is defined in Subsection R612-100-2.J.

I. Final Report of Injury and Statement of Losses - Form 130. This form is used by insurance carriers or self-insured employers to report the total losses occurring in each claim. This form must be filed with the Division within 30 days from closure of each claim and shall include all payments, including medical, disability compensation, dependent's benefits, and any other payments.

J. Statement of Benefits Paid - Form 141. This form is used by insurance carriers or self-insured employers to report the initial benefits paid to a claimant as required by Subsection R612-200-1.C.1.c.

K. Statement of Suspension of Benefits - Form 142. An insurance carrier or self-insured employer must use this form to notify a claimant if disability compensation benefits are to be suspended. The form must specify the reason for suspension. The form shall be mailed to the employee and filed with the Division five days before the suspension occurs. Suspension of benefits shall not occur until 5 days after the form is mailed and filed. Exception, if reason for suspension is returned to Work or Medically Determined/Qualified to Return to Work the insurance carrier or self-insured employer has 3 days from the return/release date to complete the required reporting.

L. Authorization to Release Industrial Accident Division Records - Form 205. This form is used to request copies from an injured worker's file in the Commission with the appropriate authorized release made by the injured worker.

M. Self-Insurance Aggregate Surety Bond -- Form 213E. This form is to be completed by a self-insured employer and its surety agent to certify the surety bond has been obtained by the self-insured employer as required by Subsection R612-400-3.C.3.c.

N. Agreement of Assumption and Guaranty of Workers' Compensation -- Form 215E. This form is to be completed by a self-insured employer agreeing to assume and guarantee all liabilities and obligations as a Utah self-insurer for workers' compensation.

O. Statement of Compensation - Form 219. Insurance carriers and self-insured employers shall use this form to notify injured workers or dependents of the basis upon which compensation has been computed as required by Section R612-200-3.

P. Restorative Services Authorization/Denial - Forms 221a (Spine), 221b (Upper Extremity), and 221c (Lower Extremity). These forms must be used by any medical provider billing under the "Restorative Services" provisions of Subsections R612-300-5.C and R612-300-3.B.

Q. Authorization Request for Medical Treatment / Carrier Response -- Form 223. This form is completed by a medical provider and insurance carrier or self-insured employer when determining whether medical services were or are necessary to treat an injury under the "Utilization Review Standards" provisions of Subsection R612-300-11.

R. Renewal Application for Self-Insurance -- Form 223 E. This application is completed by a self-insured employer seeking the annual renewal required to continue to self-insure under Subsection 34A-2-201.5.

S. Request for Medical Records -- Form 302. This form is completed by an injured worker seeking a copy of medical records

NOTICES OF PROPOSED RULES

provided under Subsection R612-300-10.C. This form must be signed by a manager of the Division.

T. Utah Bankruptcy and Insolvency Endorsement -- Form 303. This form is to be completed by the excess insurance company for each covered self-insured entity as required by Subsection R612-400-3.C.3.b.

U. Emergency Medical Service Provider Exposure Report Form -- Form 350. This form is to be utilized by the Emergency Medical Service (EMS) Providers to document exposure to blood and/or other body fluids by an employee in EMS.

V. Notice of Further Investigation of Workers' Compensation Claim -- Form 441. This form is used by insurance carriers and self-insured employers to inform an injured worker that an additional 24 days are needed to investigate the claim.

W. Corporation and Officers Workers' Compensation Exclusion -- Form 450. This form is to be used by corporate directors and/or officers to exclude themselves from workers' compensation requirements, as allowed by Subsection 34A-2-104(4), when the corporation has no other employees.

**KEY: workers' compensation, administrative procedures**  
**Date of Enactment or Last Substantive Amendment: ~~June 7, 2018~~ 2020**  
**Notice of Continuation: February 8, 2018**  
**Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104 et seq.; 63G-4-102 et seq.**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R612-200-1	Filing No. 53176

**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Industrial Accidents	
<b>Room no.:</b>	3rd Floor	
<b>Building:</b>	Heber M. Wells Bldg.	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ron Dressler	801-530-6841	rdressler@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R612-200-1. Reporting and Investigating Injuries

<b>3. Purpose of the new rule or reason for the change:</b>
The purpose for the rule change is to clarify workers' compensation injury reporting requirements in response to updated electronic data interchange (EDI) implementation by the Division of Industrial Accidents (Division).
<b>4. Summary of the new rule or change:</b>
The rule changes update references to the Division's EDI implementation guides and tables used to report workplace injuries. The rule also updates references to insurance carriers, self-insured employers, claim administrators, and non-insured employers as the entities responsible for reporting.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget since the rule change updates references. There is no change to the actual reporting and Investigating injuries.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments since the rule change updates references. There is no change to the actual reporting and Investigating injuries.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses since the rule change updates references. There is no change to the actual reporting and Investigating injuries.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings non-small businesses since the rule change updates references. There is no change to the actual reporting and Investigating injuries.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities since the rule change updates references. There is no change to the actual reporting and Investigating injuries.

**F) Compliance costs for affected persons:**

There will be no costs for affected persons since the rule change updates references. There is no change to the actual reporting and Investigating injuries.

**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.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Labor Commission, Jaceson R. Maughan, has reviewed and approved the impact analysis.

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

There should be no fiscal impact on businesses because of this rule change since the change only updates references.

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

Jaceson R. Maughan, 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 34A-2-101 et seq.	Section 34A-3-101 et seq.	Section 34A-1-104
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**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Industrial Accidents Division Claims POC 3.0 EDI Implementation Guide
<b>Publisher</b>	Industrial Accidents Division , Utah Labor Commission
<b>Issue, or version</b>	Version 1.1

**B) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Claims R3.0 Element Table
<b>Publisher</b>	Industrial Accidents Division, Utah Labor Commission
<b>Issue, or version</b>	Version 1

**C) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Third Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Claims R3.0 Event Table
<b>Publisher</b>	Industrial Accidents Division, Utah Labor Commission
<b>Issue, or version</b>	Version 1

**D) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Fourth Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Claims R3.0 Edit Matrix Table
<b>Publisher</b>	Industrial Accidents Division, Utah Labor Commission
<b>Issue, or version</b>	Version 1

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. 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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
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<b>10. This rule change MAY become effective on:</b>	12/22/2020
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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**

<b>Agency head or designee, and title:</b>	Jacson R. Maughan, Commissioner	<b>Date:</b>	11/02/2020
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**R612. Labor Commission, Industrial Accidents.  
R612-200. Workers' Compensation Rules - Filing and Paying Claims.**

- R612-200-1. Reporting and Investigating Injuries.**
- A. Employers' Duty to Report Work Injuries.
    - 1. An employer is not required to report an injury that requires only first aid treatment, as defined by Subsection R612-100-3.A.
    - 2. Except for injuries treated only by first aid, an employer shall report each employee work injury within 7 days after receiving initial notice of the injury, as follows:
      - a. An employer that has obtained workers' compensation insurance shall report the injury to its insurance carrier.
      - b. An employer that has received Division authorization to self-insure shall report the injury to its claims administrator.
      - c. An employer that has failed to obtain worker's compensation coverage shall report the injury by contacting the Division directly.

- 3. An employer has notice of a work injury upon the earliest of:
  - a. ~~[O]~~ observation of the injury;
  - b. ~~[V]~~ verbal or written notice of the injury from any source;
- or
  - c. ~~[R]~~ receipt of any other information sufficient to warrant further inquiry by the employer.

**B. Submitting Reports of Injury to the Division.**

1. An insurance carrier or self-inured employer shall submit Reports of Injury and Subsequent Reports of Injury electronically in compliance with the requirements of the Industrial Accidents Division Claims EDI Implementation Guide and Utah Claims R3 EDI Tables, which are incorporated by reference.

~~[+]~~2. Except for injuries treated only by first aid as defined by Subsection R612-100-~~[3]~~[A], an insurance carrier, self-insured ~~[claim administrator]~~ employer, or uninsured employer shall submit a First Report of Injury or illness to the Division within fourteen days after receiving initial notice of the injury.

a. An insurance carrier or self-insured ~~[claim administrator]~~ employer has notice of a work injury upon receipt of verbal or written information that includes the name of the employer, the name of the employee and the date of injury.

~~[—] b. The insurance carrier or self-insured claim administrator shall submit the First Report of Injury to the Division electronically in compliance with the content and formatting requirements of the Industrial Accidents Division Claims EDI Implementation Guide ("EDI Guide" V2.2, 04-19-13) and the Utah Claims R3 EDI Tables ("EDI Tables"; 04-19-13) adopted and incorporated by this reference as part of these rules.]~~

~~[e] b.~~ An uninsured employer shall report the information required by this subsection as part of the employer's initial contact with the Division required by ~~[s]~~ Subsection A.2.c of this rule.

**C. Investigation of Claims; Notice to Division and Claimants; Commencement of Benefits.**

1. An insurance carrier~~;~~ or self-insured employer~~;~~ or uninsured employer shall promptly investigate a reported work injury and either accept or deny workers' compensation liability for the claim within 21 days after receiving initial notice of the injury.

a. If, with reasonable diligence, an insurance carrier~~;~~ or self-insured employer~~;~~ or uninsured employer cannot complete its investigation within 21 days after initial notice, ~~[it may complete and submit Division Form 441, "Notice of Further Investigation of a Workers' Compensation Claim" notify the Division and claimant that the matter remains under investigation]~~ the insurance carrier or self-insured employer shall report the investigation of the claim through current EDI processes. The insurance carrier, self-insured employer, or uninsured employer is then allowed 24 days in addition to the initial 21-day period to complete its investigation and accept or deny liability of the claim.

b. An insurance carrier or self-insured employer denying a claim for workers' compensation benefits shall report such denial through current EDI processes. ~~[—An uninsured employer denying a claim for workers' compensation benefits shall complete and mail to the Division Form 089, "Employee Notification of Denial of Claim" and to the claimant.]~~

c. If the insurance carrier~~;~~ or self-insured employer~~;~~ or uninsured employer accepts liability for the claim, payment of benefits shall commence within 7 days from the date of acceptance. The insurance carrier~~;~~ or self-insured employer~~;~~ or uninsured employer shall use Division Form 141, "Statement of Insurance Carrier or Uninsured Employer with Respect to Payment of Benefits" to shall

report the initial benefits paid to a claimant through current EDI processes. ~~[Form 141]~~ The statement of benefits paid must accompany the first payment to the claimant ~~[and must be filed with or mailed to the Division on that same date]~~.

d. An insurance carrier~~[s]~~ or self-insured employer's~~[s]~~ ~~or uninsured employer's~~ payment of benefits during investigation of a claim does not prevent subsequent denial of the claim after the investigation is completed.

**D. Consequences of Failure to Comply.**

1. Pursuant to Subsection 34A-2-407(8) of the Utah Workers' Compensation Act, the Division may impose a civil assessment of up to \$500 for an insurance carrier, insured employer, self-insured employer, or uninsured employer's failure, without good cause, to comply with the requirements of this rule.

a. "Good cause" includes a claimant's unreasonable failure to sign requested medical releases or otherwise cooperate in the investigation of a claim.

b. For improperly filed reports, the civil assessment shall be imposed for the report as a whole and not for each data element within a report.

2. In addition to the civil assessment authorized by Subsection 34A-2-407(8), an insurance company or self-insured employer's failure, without good cause, to comply with the requirements of this rule may result in:

a. referral of the insurance company to the Insurance Department for appropriate disciplinary action; or

b. revocation of a self-insured employer's authorization to remain self-insured.

3. The method of issuing the assessments shall be set by the division's policies and procedures.

4. Assessments shall be issued in the form of an order signed by the division's presiding officer and pursuant to the requirements contained in Section 63G-4-203.

5. An aggrieved party may seek agency review of any order pursuant to Section 63G-4-301.

**KEY: workers' compensation, filing deadlines, time, administrative proceedings**

**Date of Enactment or Last Substantive Amendment:** ~~November 28, 2016~~ 2020

**Notice of Continuation:** February 8, 2018

**Authorizing, and Implemented or Interpreted Law:** 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R612-300	Filing No. 53174

**Agency Information**

<b>1. Department:</b>	Labor Commission
<b>Agency:</b>	Industrial Accidents
<b>Room no.:</b>	3rd Floor
<b>Building:</b>	Heber M. Wells Bldg.
<b>Street address:</b>	160 E 300 S
<b>City, state:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 146600

<b>City, state, zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ron Dressler	801-530-6841	rdressler@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R612-300. Workers' Compensation Rules - Medical Care
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this amendment is to adopt, with modifications, the Optum 2020 Essential Resource-Based Relative Value Schedule (RBRVS), 2020 1st Quarter Update and to adjust procedures for certain medical specialties.
<b>4. Summary of the new rule or change:</b>
The amendment incorporates by reference current versions of the Resource-Based Relative Value Scale (RBRVS), modifies required forms, adjusts reimbursement codes and definitions, strikes provisions that restrict certain fees, and clarifies when fees can be discounted.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or saving to the state budget because making the changes to this rule simply clarifies what already exists, updates the REBRVS, and adjusts procedures for certain medical specialties. These changes will not result in any new costs or savings.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments because making the changes to this rule simply clarifies what already exists, updates the REBRVS, and adjusts procedures for certain medical specialties. These changes will not result in any new costs or savings.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or saving to small businesses because making the changes to this rule simply clarifies what already exists, updates the REBRVS, and adjusts procedures for certain medical specialties. These changes will not result in any new costs or savings.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses because making the changes to this rule simply clarifies what already exists, updates the REBRVS, and adjusts procedures for certain medical specialties. These changes will not result in any new costs or savings.

**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 persons other than small businesses, non-small businesses, state, or local government entities because making the changes to this rule simply clarifies what already exists, updates the REBRVS, and adjusts procedures for certain medical specialties. These changes will not result in any new costs or savings.

**F) Compliance costs for affected persons:**

There are no compliance costs because making the changes to this rule simply clarifies what already exists, updates the REBRVS, and adjusts procedures for certain medical specialties. These changes will not result in any new costs or savings.

**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**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Labor Commission, Jaceson R. Maughan, has reviewed and approved this analysis.

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

There is no cost or savings with this rule change as it only updates the RBRVS and adjusts procedures for certain medical specialties.

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

Jaceson R. Maughan, 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 34A-1-104	Section 34A-2-201	
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**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Current Procedural Coding Expert
<b>Publisher</b>	Optum360
<b>Issue, or version</b>	2020

**B) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	The Essential RBRVS
<b>Publisher</b>	Optum260
<b>Issue, or version</b>	2020

**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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
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<b>10. This rule change MAY become effective on:</b>	12/22/2020
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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**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan	<b>Date:</b>	11/02/2020
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**R612. Labor Commission, Industrial Accidents.  
R612-300. Workers' Compensation Rules - Medical Care.  
R612-300-3. Required Reports.**

A. ~~[Form 123, Physician's Initial Report]~~Physician's Initial Report of Work Injury Or Occupational Disease - Form 123. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221, "Restorative Services Authorization Form" required by Subsection R612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Attending Physician's Statement, and Form 044, Employee's Notification of Intent to Leave Locality or State,~~and Form 044, Attending Physician's Statement]~~ and to Change Doctor or Hospital. These forms are to be submitted to the Division before an injured worker leaves Utah.

~~[Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.]~~

**R612-300-4. General Method For Computing Medical Fees.**

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

Optum360 Essential RBRVS 20~~[49]~~20 annual 1st Quarter Update," (edition includes RBRC~~[49]~~20/U179~~[5]~~9 and U1~~[796]~~800) ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): \$68.00;
2. Medicine (Evaluation and Medicine codes 99203-99204 and 99213-99214): \$56.00;
3. Medicine (all other Evaluation and Medicine codes): \$52
4. Pathology and Laboratory: \$56.00;
5. Radiology: \$58.00;
6. Restorative Services: \$50.00;
7. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): \$65.00;
8. Other Surgery: \$53.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

- a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or
- b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

**R612-300-5. Fees for Specific Procedures.**

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

- a. The patient's condition must have the potential for restoration of function;
- b. The treatment must be prescribed by the treating physician;
- c. The treatment must be specifically targeted to the patient's condition; and

## NOTICES OF PROPOSED RULES

d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97169, athletic training evaluations; 97172, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes ~~97164~~97010 through 97150, 97161 through 97168, and 97530 through 97610 are limited to payment for a maximum of three procedures/units per visit, or six procedures/units if ~~different sites are~~ more than one site is treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payor shall pay the three highest valued procedures for each treatment site/body part for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, is paid in addition to the three highest valued procedures, and is limited to 4 units per injury claim. Patient education includes training in activities of daily living, lifestyle, and any restrictions to accommodate the patient's return to work.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. 97164 and 97168 may be used for reevaluation of the patient's condition. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances. 97164 and 97168 shall not be used as an office charge only. Documentation must reflect that a reevaluation was necessary and performed due to complications, additional surgeries and/or procedures, change in medical providers, or a change in stability of the patient's condition. Generally, this should be used every six visits unless there is objective documentation that a reevaluation and modification of treatment was necessary.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/ assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within business ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period. If the payor does not respond within ten business days from the RSA submission date, any visits during that ten day period shall be paid by the payor.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related; or

ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Stimulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electrophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

H. Dental Injuries.

1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor a request for

authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

I. Drug testing. Drug screenings for addictive classes of pain medications shall be performed as recommended in the Utah clinical Guidelines on Prescribing Opiates for Treatment of Pain, Utah Department of Health 2009. The collection and billing shall be limited to one 80305, 80306, or 80307 code per date of service, except for unusual circumstances.

~~J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:~~

- ~~1. Muscle Testing, CPT codes 95832 through 95857;~~
- ~~2. Computer based Motion Analysis, CPT codes 96000 through 96004;~~
- ~~3. Athletic Training Evaluation, CPT codes 97169 to 97172;~~
- ~~4. Acupuncture, CPT codes 97810 through 97814;~~
- ~~5. Analysis of Data, now BR, CPT code 99090;~~
- ~~6. Patient Education, CPT codes 98960 through 98962;~~
- ~~7. Educational supplies, CPT code 99071; or~~
- ~~8. Percutaneous diskeetomies, endoscopic diskeetomies, IDEPT, platelet rich plasma injections, and heat or chemical treatments for discs.]~~

**R612-300-7. Billing and Payment.**

A. Billing Limitations.

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

B. Discounting and down-coding.

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific written contract between the medical provider and payor/guarantor, or an agent of the payor/guarantor, through a bona fide provider network arrangement, and is disclosed to the provider. A third party administrator or claims processing agency may not apply a discount absent a specific written contract with the provider.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

- a. The submitted code is incorrect;
- b. Another code more closely identifies the medical care;
- c. The medical provider has not submitted the documentation necessary to support the code; or
- d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within one year of the date of service on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

E. Hospital Fees.

1. Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care.

2. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

3. Fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.

F. Charges for Supplies, Materials, or Drugs.

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid. Discounts shall not apply to supplies.

G. Miscellaneous.

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

NOTICES OF PROPOSED RULES

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

H. Prompt Payment and Interest.

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

**KEY: workers' compensation, fees, medical practitioners, nurse practitioners**

**Date of Enactment or Last Substantive Amendment:** ~~December 23, 2019~~ **2020**

**Notice of Continuation:** February 8, 2018

**Authorizing, and Implemented or Interpreted Law:** 34A-1-104; 34A-2-201

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R612-400-5	Filing No. 53166

**Agency Information**

<b>1. Department:</b>	Labor Commission
<b>Agency:</b>	Industrial Accidents
<b>Room no.:</b>	3rd Floor
<b>Building:</b>	Heber M. Wells Bldg.
<b>Street address:</b>	160 E 300 S

<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ron Dressler	801-530-6841	rdressler@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund
<b>3. Purpose of the new rule or reason for the change:</b>
Workers' compensation insurance premiums in Utah include assessments to fund the Employers' Reinsurance Fund (ERF), and the Uninsured Employers' Fund (UEF). These assessment rates are reviewed annually and amended as appropriate in order to ensure the funds remain viable and fully funded. The proposed changes establish these assessment rates for the 2021 calendar year.
<b>4. Summary of the new rule or change:</b>
This rule update establishes the following premium rates for 2021: 0.50% for the UEF and 0% for the ERF. This is an overall decrease in rates of 1.5%.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is expected cost savings to the state budget as the combined premium assessment rates for these funds is 1.5% lower than last year.
<b>B) Local governments:</b>
There is expected cost savings to local governments as the combined premium assessment rates for these funds is 1.5% lower than last year.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is expected cost savings to small businesses as the combined premium assessment rates for these funds is 1.5% lower than last year.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

There is expected cost savings to non-small businesses as the combined premium assessment rates for these funds is 1.5% lower than last year.

**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 expected cost savings as the combined premium assessment rates for these funds is 1.5% lower than last year.

**F) Compliance costs for affected persons:**

There are no anticipated changes to compliance costs as these premiums are collected and paid each year.

**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**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Labor Commission, Jaceson R. Maughan, has reviewed and approved the fiscal analysis

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

There will be an overall cost savings to affected persons, because the assessment rate will go down by 1.5%.

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

Jaceson R. Maughan, 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 59-9-101(2)		
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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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
--------------------------------------------	------------

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan	<b>Date:</b>	10/28/2020
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**R612. Labor Commission, Industrial Accidents.  
R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.  
R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.**

A. Pursuant to ~~Section~~ Subsection 59-9-101(2), Sections 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, ~~2020~~ 2021, as established by the Labor Commission, shall be:

1. 0.50% for the Uninsured Employers' Fund;
2. ~~0.0~~ 0.0 ~~4.5~~ % for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in ~~Section~~ Subsection 59-9-101(2)(a).

**KEY:** workers' compensation, insurance, rates, waivers  
**Date of Enactment or Last Substantive Amendment:** ~~December 23, 2019~~ 2020  
**Notice of Continuation:** February 8, 2018  
**Authorizing, and Implemented or Interpreted Law:** 59-9-101(2)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R649-1	Filing No. 53154

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Oil and Gas	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	1594 W North Temple, Suite 1210	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R649-1. Oil and Gas Definitions
<b>3. Purpose of the new rule or reason for the change:</b>
During the 2020 General Session, S.B. 148 was passed, which modifies the process for imposing and collecting administrative penalties and causes the current Oil and Gas rules to be amended.
<b>4. Summary of the new rule or change:</b>

Section R649-1-1 establishes the definitions for the Oil and Gas Program. "Willful Violation" is a new term added to the definitions.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is a total of one state agency, the Division of Oil, Gas and Mining (Division), that will be associated with this proposed rule change. There is no estimated cost to the state as these amendments are administrative.
<b>B) Local governments:</b>
This rule does not apply to local governments.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
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 . There will be an estimated fiscal cost to oil and gas operators who receive a Division enforcement order, however, it cannot be estimated how many oil and gas operators will receive a Division enforcement order or the class of violation committed.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There are a total of 4 non-small business oil and gas operators (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . There will be an estimated fiscal cost to oil and gas operators who receive a Division enforcement order, however, it cannot be estimated how many oil and gas operators will receive a Division enforcement order or the class of violation committed.
<b>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 <b>agency</b>):</b>
This rule change will not affect persons other than small businesses, businesses, or local government entities.
<b>F) Compliance costs for affected persons:</b>
There will be no compliance costs for oil and gas operators.
<b>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.)</b>

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
This rule change is estimated to have a fiscal cost to oil and gas operators who are in violation and receive a Division enforcement order, however, the number of violations and the violation classes cannot be estimated.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
--------------------------------------------	------------

<b>10. This rule change MAY become effective on:</b>	12/22/2020
------------------------------------------------------	------------

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**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	10/30/2020
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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.

## NOTICES OF PROPOSED RULES

"Central Disposal Facility" means a facility that is used by one or more producers for disposal of exempt E and P wastes and that the operator of the facility receives no monetary remuneration, other than operating cost sharing.

"Class II Injection Well" means a well that is used for:

1. the disposal of fluids that are brought to the surface in connection with conventional oil or natural gas production and that may be commingled with wastewater produced from the operation of a gas plant that is an integral part of production operations, unless that wastewater is classified as a hazardous waste at the time of injection;

2. enhanced recovery of oil or gas; or

3. storage of hydrocarbons that are liquids at standard temperature and pressure conditions.

"Closed System" means the use of a combination of solids control equipment including a shale shaker, flowline cleaner, desanders, desilters, mud cleaners, centrifuges, agitators, and any necessary pumps and piping incorporated in a series on the rig's steel mud tanks, or a self contained unit that eliminates the use of a reserve pit to dump and dilute drilling fluids for the removal of entrained drill solids. A closed system for the purpose of these rules may with Division approval include the use of a small pit to receive cuttings, but does not include the use of trenches for the collection of fluids of any kind.

"Coalbed Methane" means natural gas that is produced, or may be produced, from a coalbed and rock strata associated with the coalbed.

"Commercial Disposal Facility" means a disposal well, pit or treatment facility whose owner or operator receives compensation from others for the temporary storage, treatment, and disposal of produced water, drilling fluids, drill cuttings, completion fluids, and any other exempt E and P wastes, and whose primary business objective is to provide these services.

"Completion of a Well" means that the well has been adequately worked to be capable of producing oil or gas or that well testing as required by the division has been concluded.

"Confining Strata" refers to a body of material that is relatively impervious to the passage of liquid or gas and that occurs either below, above, or lateral to a more permeable material in such a way that it confines or limits the movement of liquids or gases that may be present.

"Correlative Rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.

"Cubic Foot" of gas means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 psia and a standard temperature base of 60 degrees Fahrenheit.

"Day" means a period of 24 consecutive hours.

"Development Wells" means any oil and gas producing wells other than wildcat wells.

"Director" means the executive and administrative head of the division.

"Disposal Facility" means an injection well, pit, treatment facility or combination thereof that receives E and P Wastes for the purpose of disposal. This includes both commercial and noncommercial facilities.

"Disposal Pit" means a lined or unlined pit approved for the disposal or storage of E and P Wastes.

"Division" means the Division of Oil, Gas and Mining.

"Drilling Fluid" means a circulating fluid usually called mud, that is introduced in a drill hole to lubricate the action of the rotary bit, remove the drilling cuttings, and control formation pressures.

"E and P Waste" means Exploration and Production Waste, and is defined as waste resulting from the drilling of and production

from an oil and gas well as determined by the Environmental Protection Agency (EPA), prior to January 1, 1992, to be exempt from Subtitle C of the Resource Conservation and Recovery Act (RCRA).

"Emergency Pit" means a pit used for containing any fluid at an operating well during an actual emergency or for a temporary period of time.

"Enhanced Recovery" means the process of introducing fluid or energy into a pool for the purpose of increasing the recovery of hydrocarbons from the pool.

"Enhanced Recovery Project" means the injection of liquids or hydrocarbon or non-hydrocarbon gases directly into a reservoir for the purpose of augmenting reservoir energy, modifying the properties of the fluids or gases in the reservoir, or changing the reservoir conditions to increase the recoverable oil, gas, or oil and gas through the joint use of two or more well bores.

"Entity" means a well or a group of wells that have identical division of interest, have the same operator, produce from the same formation, have product sales from a common tank, LACT meter, gas meter, or are in the same participating area of a properly designated unit. Entity number assignments are made by the division in cooperation with other state government agencies.

"Field" means the general area underlaid by one or more pools.

"Gas" means natural gas or natural gas liquids or other gas or any mixture thereof defined as follows:

1. "Natural Gas" means those hydrocarbons, other than oil and other than natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form. Natural gas includes coalbed methane.

2. "Natural Gas Liquids" means those hydrocarbons initially in reservoir natural gas, regardless of gravity, that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation, absorption, adsorption, or other methods.

3. "Other Gas" means hydrogen sulfide (H<sub>2</sub>S), carbon dioxide (CO<sub>2</sub>), 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 Subsection 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 Subsection 40-6-6.5(4)(d)(i)(D) of between 150% and 400% as determined by the board; and

10. a statement that any initial compulsory pooling order may apply to subsequent wells within the drilling unit including any statutory

risk compensation award imposed under Utah law pursuant to Subsection 40-6-6.5(12).

"Oil" means crude oil or condensate or any mixture thereof, defined as follows:

1. "Crude Oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

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" means the person who has been designated by the owners or the board to operate a well or unit.

"Operatorship" means the exclusive right, privilege and obligation of exercising any rights granted by the owners or the board to act as operator of a well or drilling unit which rights are necessary and effective for prospecting for, producing, storing, allocating and distributing oil and gas extracted from a well or a drilling unit.

"Owner" means the person who has the right to drill into and produce from a reservoir and to appropriate the oil and gas that they produce, either for themselves and others.

"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 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.

NOTICES OF PROPOSED RULES

"Product" means any commodity made from oil and gas.

"Production Facilities" means any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells or injection wells, prior to any processing plant or refinery.

"Purchaser or Transporter" means any person who, acting alone or jointly with any other person, by means of his own, an affiliated, or designated carrier, transporter or taker, shall directly or indirectly purchase, take or transport by any means whatsoever, or who shall otherwise remove from any well or lease, oil or gas produced from any pool, excepting royalty portions of oil or gas taken in kind by an interest owner who is not the operator.

"Recompletion" means any completion in a new perforated interval or pool within an established wellbore and approved as a recompletion by the division.

"Refinery" means a facility, other than a gas processing plant, where controlled operations are performed by which the physical and chemical characteristics of petroleum or petroleum products are changed.

"Reserve Pit" means a pit used to retain fluid during the drilling, completion, and testing of a well.

"Seismic Operator" means a person who conducts seismic exploration for oil or gas, whether for themselves or as a contractor for others.

"Shut-in Well" means a well that is completed, is shown to be capable of production in paying quantities, and is not presently being operated.

"Spud In" means the first boring of a hole in the drilling of a well by any type of rig.

"State" means the State of Utah.

"Stratigraphic Test or Core Hole" means any hole drilled for the sole purpose of obtaining geological information. The general rules applicable to the drilling of a well will apply to the drilling of a stratigraphic test or core hole.

"Temporarily Abandoned Well" means a well that is completed, is shown not capable of production in paying quantities, and is not presently being operated.

"Temporary Spacing Unit" means a specified area of land designated by the board for purposes of determining well density and location. A temporary spacing unit shall not be a drilling unit as provided for in Section 40-6-6, Drilling Units, and does not provide a basis for pooling the interest therein as does a drilling unit.

"Underground Source of Drinking Water" (USDW) means a fresh water aquifer or a portion thereof that supplies drinking water for human consumption or that contains less than 10,000 mg/l 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.

"Willful Violation" means any action or inaction done with conscious objective or desire to engage in the action or inaction that a reasonably prudent person would know is likely to cause a violation.

"Working Interest Owner" means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

"Workover" means any operation designed to sustain, to restore, or to increase the production rate, the ultimate recovery, or the reservoir pressure system of a well or group of wells and approved as a workover, a secondary recovery, a tertiary recovery, or a pressure maintenance project by the division. The definition 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: [~~July 23,~~ 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.):	R649-10	Filing No. 53155

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Oil, Gas and Mining; Oil and Gas
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple, Suite 1210
<b>City, state:</b>	Salt Lake City, UT
<b>Mailing address:</b>	1594 W North Temple, Suite 1210
<b>City, state, zip:</b>	Salt Lake City, UT 84114
<b>Contact person(s):</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R649-10. Administrative Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
During the 2020 General Session, S.B. 148 was passed, which modifies the process for imposing and collecting administrative penalties and causes the current Oil and Gas rules to be amended.
<b>4. Summary of the new rule or change:</b>
Rule R649-10 establishes the Oil and Gas Program's Administrative Procedures. A new citation is added to Section R649-10-1, Section R649-10-6 gains clarification of written and final orders, and Section R649-10-8 clarifies the exhaustion of administrative remedies.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is a total of one state agency, the Division of Oil, Gas and Mining (Division), that will be associated with this proposed rule change. There is no estimated cost to the state as these amendments are administrative.
<b>B) Local governments:</b>
This rule does not apply to local governments.
<b>C) Small businesses</b> ("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 . There will be an estimated fiscal cost to oil and gas operators who receive a Division enforcement order, however, it cannot be estimated how many oil and gas operators will receive a Division enforcement order or the class of violation committed.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are a total of 4 non-small business oil and gas operators (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . There will be an estimated fiscal cost to oil and gas operators who receive a Division enforcement order, however, it cannot be estimated how many oil and gas operators will receive

a Division enforcement order or the class of violation committed.

**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	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

This rule change is estimated to have a fiscal cost to oil and gas operators who are in violation and receive a Division enforcement order, however, the number of violations and the violation classes cannot be estimated.

**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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
--------------------------------------------	------------

<b>10. This rule change MAY become effective on:</b>	12/22/2020
------------------------------------------------------	------------

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**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	10/30/2020
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**R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**

**R649-10. Administrative Procedures.**

**R649-10-1. Designation of Informal Adjudicative Proceedings.**

1. Adjudicative proceedings ~~which~~that shall be conducted informally before the division in accordance with these rules are ~~all~~any actions prescribed by the Oil and Gas Conservation General Rules as being specifically under the division's authority and jurisdiction including: R649-2 General Rules; R649-3 Drilling and Operating Practices; R649-5 Underground Injection Control of Recovery Operations and Class II Injection Wells; R649-6 Gas Processing and Waste Crude Oil Treatment; R649-8 Reporting and Report Forms; R649-9 Disposal of Produced Water; R649-11 Administrative Penalties.

2. Prior to the issuance of a final order in any adjudicative proceeding, the presiding officer may convert an informal proceeding to a formal adjudicative proceeding if:

2.1. Conversion of the proceeding is in the public interest.

2.2. Conversion of the proceeding does not unfairly prejudice the rights of any party.

3. Informal adjudicative proceedings shall be commenced and conducted in accordance with these rules and ~~the provisions of~~the applicable Oil and Gas Conservation General Rules. In case of conflict between these rules and the Oil and Gas Conservation General Rules, these rules shall govern the informal adjudicative proceedings.

**R649-10-2. Definitions.**

As used in these rules:

1. "Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including ~~all~~any agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of ~~all~~any of such actions.

2. "Agency" means the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining including the director or division employees acting on behalf of or under the authority of the director or board.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

4. "Board" means the Board of Oil, Gas and Mining.

5. "Division" means the Division of Oil, Gas and Mining.

6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

7. "Party" means the board, division, or other person commencing an adjudicative proceeding, ~~all~~any respondents, ~~all~~any persons permitted by the board to intervene in the proceeding, and ~~all~~any persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

8. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

9. "Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. ~~For the purpose of these rules, t~~The board, or its appointed hearing examiner, shall be considered the presiding officer of ~~all~~any appeals or informal adjudicative proceedings ~~which~~that is commenced before the division as well as ~~all~~any adjudicative proceeding[s] ~~which~~that is commenced

before the board. The director or his designated agent shall be considered a presiding officer for ~~any~~ informal adjudicative proceedings ~~which that is~~ commenced before the division. If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

10. "Respondent" means any person against whom an adjudicative proceeding is initiated whether by an agency or any other person.

### **R649-10-3. Commencement of Informal Adjudicative Proceedings.**

1. Except for emergency orders, ~~any~~ informal adjudicative proceeding[s] shall be commenced by:

1.1. A Notice of Agency Action, if proceedings are commenced by the board or division; or

1.2. A Request for Agency Action, if proceedings are commenced by persons other than the board or division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.1. The Notice of Agency Action shall be in writing and shall be signed by a presiding officer and shall include:

2.1.1. The names and mailing addresses of ~~any~~ person[s] to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency.

2.1.2. The division's file number or other reference number.

2.1.3. The name of the adjudicative proceeding.

2.1.4. The date that the Notice of Agency Action was mailed.

2.1.5. A statement that the adjudicative proceeding is to be conducted informally according to the provision of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.1.6. A statement that the parties may request an informal hearing before the division within ten days, or such later period as may be provided for in the Oil and Gas Conservation General Rules, of the date of mailing or publication.

2.1.7. A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained.

2.1.8. The name, title, mailing address, and telephone number of the presiding officer.

2.1.9. A statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

2.2. The Division shall:

2.2.1. Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule.

2.2.2. Publish the Notice of Agency Action as required by statute or by the Oil and Gas Conservation General Rules.

2.2.3. Post a copy of the notice in a public area in the main office of the division at least 24 hours in advance of the scheduled agency proceeding.

2.3. A Request for Agency Action initiated by a person other than the board or the division shall be in writing and signed by the person seeking action by the agency or by his representative, and shall include:

2.3.1. The names and addresses of ~~any~~ persons to whom a copy of the request for agency action is being sent.

2.3.2. The agency's file number or other reference number, if known.

2.3.3. The date that the request for agency action was mailed.

2.3.4. A statement of the legal authority and jurisdiction under which the agency action is requested.

2.3.5. A statement of the relief or action sought from the division.

2.3.6. A statement of the facts and reasons forming the basis for relief or action.

2.4. The person requesting agency action shall file the request with the division and shall send a copy by mail to each person known to have a direct interest in the requested agency action unless previously waived in writing by each person entitled to receive notice of the requested agency action.

2.5. The person requesting the agency action may use the division forms as specified in the Oil and Gas Conservation General Rules as a request for agency action.

2.6. The presiding officer shall promptly review a Request for Agency Action and shall:

2.6.1. Notify the requesting party in writing whether the request is granted and when the adjudicative proceeding is completed;

2.6.2. Notify the requesting party in writing that the request is denied; or

2.6.3. Notify the requesting party that further proceedings are required to determine the agency's response to the request.

2.7. The division shall mail any required notice to ~~any~~ parties, except that any notice required by R649-10-3-2.6 may be published when publication is required by statute.

2.7.1. Give the division's file number or other reference number.

2.7.2. Give the name of the proceeding.

2.7.3. Designate that the proceeding is to be conducted informally according to ~~the provisions of~~ these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.7.4. If a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default.

2.7.5. If the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party with the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules.

2.7.6. Give the name, title, mailing address, and telephone number of the presiding officer.

### **R649-10-4. Procedures for Informal Adjudicative Proceedings.**

1. Procedures for informal adjudicative proceedings should include the following:

1.1. Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

1.2. The agency shall hold a hearing if a hearing is requested within ten days or such later period as may be provided for in the Oil and Gas Conservation General Rules.

1.3. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency Action shall be permitted to testify, present evidence, and comment on the issues.

1.4. Hearings will be held only after timely notice to ~~each~~ party[ies].

1.5. Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

1.6. ~~Any~~ parties shall have access to information contained in the agency's files and to ~~any~~ materials and information gathered in any investigation, to the extent permitted by law.

## NOTICES OF PROPOSED RULES

1.7. Intervention is prohibited, except where a federal statute or rule requires that a state permit intervention.

1.8. ~~All~~ Each hearing[s] shall be open to ~~all~~ any part[ies]y.

1.9. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

1.9.1. The decision.

1.9.2. The reasons for the decision.

1.9.3. A notice of any right of administrative or judicial review available to the parties.

1.9.4. A statement that the filing of an appeal or the requesting of a review shall be accomplished within 30 days of the issuance of the order.

1.10. The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

1.11. A copy of the presiding officer's order shall be promptly mailed to each of the parties and to ~~all~~ any persons who request a copy.

2.1. The agency may record any hearing.

2.2. Any party, at his own expense, may have a reporter, approved by the agency, prepare a transcript from the agency's record of the hearing.

3.0. Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

### **R649-10-5. Default In An Informal Proceeding.**

1. The presiding officer may enter an order of default against:

1.1. A party in an informal adjudicative proceeding if after proper notice the party fails to participate in the informal adjudicative proceeding.

2.0. An order of default shall include a statement of the grounds for default and shall be mailed to ~~all~~ each part[ies]y.

3.1. A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.

3.2. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

3.3. A defaulted party may seek board review under R649-10-6 only on the decision of the presiding officer on the motion to set aside the default.

4.0. In an adjudicative proceeding commenced by the agency, or in an adjudicative proceeding commenced by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceeding without the participation of the party in default and shall determine ~~all~~ any issue[s] in the adjudicative proceeding, including those affecting the defaulting party.

5.0. In an adjudicative proceeding that has no parties other than the agency and the party(ies) in default, the presiding officer may, after issuing the order(s) of default, dismiss the proceeding.

### **R649-10-6. Appeal of Final Division Order.**

1. A request for review of a ~~an~~ final order issued by the division shall be filed with the secretary to the Board within 30 days of issuance of the order and:

1.1. Be signed by the party seeking review.

1.2. State the grounds for review and the relief requested.

1.3. State the date ~~upon which~~ it was mailed.

1.4. Be sent by mail to the presiding officer and to each party.

2. Within 15 days of the mailing date of request for review, or within the time period provided by agency rule, whichever is longer,

any party may file a response with the board. One copy of the response shall be sent by mail to each of the parties and to the presiding officer.

3. The board shall review the final order within a reasonable time or within the time required by statute or the agency's rules.

4. To assist in review, the board may by order or rule permit the parties to file briefs or other papers, or to conduct oral argument.

5. Notice of hearings on review shall be mailed to ~~all~~ each part[ies]y.

6.1. Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the board shall issue a written order on review.

6.2. The written order on review shall be signed by the board chairman or by a person designated by the board for that purpose and shall be mailed to each party.

6.3. The written order on review shall contain:

6.3.1. A designation of the statute or rule permitting or requiring review.

6.3.2. A statement of the issues reviewed.

6.3.3. Findings of fact as to each of the issues reviewed.

6.3.4. Conclusions of law as to each of the issues reviewed.

6.3.5. The reasons for the disposition.

6.3.6. Whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether ~~all or~~ any portion of the adjudicative proceeding is to be remanded.

6.3.7. A notice of any right of further administrative reconsideration or judicial review available to aggrieved parties.

6.3.8. The time limits applicable to any appeal or review.

### **R649-10-7. Emergency Orders.**

Notwithstanding the other provisions of these rules, the director or any member of the board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-6-10. The emergency order shall remain in effect no longer than until the next regular meeting of the board, or such shorter period of time as shall be prescribed by statute.

1. An emergency order may be issued if:

1.1. The facts known by or presented to the director or board member are supported by affidavit to show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

1.2. The threat requires immediate action by the director or board member,

2. Limitations. In issuing its emergency order, the director or board member shall:

2.1. Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2.2. Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings;

2.3. Give immediate notice to the persons who are required to comply with the order; and

2.4. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the division shall commence a formal adjudicative proceeding in accordance with the procedural rules of the board.

### **R649-10-8. Exhaustion of Administrative Remedies.**

A person aggrieved by a final division order in an adjudicative proceeding must seek review of that final division order by the board as provided in R649-10-6.

**R649-10-9. Waivers.**

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person~~(s)~~ by a signed, written waiver in a form acceptable to the division.

**KEY: oil and gas law**

**Date of Enactment or Last Substantive Amendment:** ~~December 18, 1996~~**2020**

**Notice of Continuation:** July 23, 2019

**Authorizing, and Implemented or Interpreted Law:** 40-6-1 et seq.; 63G-4

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R649-11	Filing No. 53156

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Oil, Gas and Mining; Oil and Gas	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple, Suite 1210	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	1594 W North Temple, Suite 1210	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Natasha Ballif	801-538-5328	natashaballif@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R649-11. Administrative Penalties
<b>3. Purpose of the new rule or reason for the change:</b>
During the 2020 General Session, S.B. 148 was passed, which modifies the process for imposing and collecting administrative penalties and causes the current Oil and Gas rules to be amended.
<b>4. Summary of the new rule or change:</b>
Rule R649-11 establishes the rules and procedures for imposing and collecting administrative penalties, including a penalty assessment, penalty calculation, and classifications of violations.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
There is a total of one state agency, the Division of Oil, Gas and Mining (Division), that will be associated with this proposed rule change. There is no estimated cost to the state as these amendments are administrative.			
<b>B) Local governments:</b>			
This rule does not apply to local governments.			
<b>C) Small businesses</b> ("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 . There will be an estimated fiscal cost to oil and gas operators who receive a Division enforcement order, however, it cannot be estimated how many oil and gas operators will receive a Division enforcement order or the class of violation committed.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There are a total of 4 non-small business oil and gas operators (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . There will be an estimated fiscal cost to oil and gas operators who receive a Division enforcement order, however, it cannot be estimated how many oil and gas operators will receive a Division enforcement order or the class of violation committed.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
This rule change will not affect persons other than small businesses, businesses, or local government entities.			
<b>F) Compliance costs for affected persons:</b>			
There will be no compliance costs for oil and gas operators.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State	\$0	\$0	\$0
Government			

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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

This proposed rule is estimated to have a fiscal cost to oil and gas operators who are in violation and receive a Division enforcement order, however, the number of violations and the violation classes cannot be estimated.

**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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	John Baza, Director	<b>Date:</b>	10/30/2020
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**R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**

**R649-11. Administrative Penalties.**

**R649-11-1. General Information on Authority and Procedures.**

1. Objectives and Enforcement Authority. Administrative penalties are assessed under Section 40-6-11 of the Utah Oil and Gas Conservation Act (the "Act") to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Oil and Gas Conservation Act on the part of the oil and gas industry. The division shall have any enforcement rights or procedures allowed under Title 40, Chapter 6, Board and division of oil, gas and mining.

2. How Assessments are Made. The division shall appoint an assessment officer to review each unabated notice of violation in accordance with the assessment procedures described in Section R649-11-2 to determine whether an administrative penalty shall be assessed and the amount of the penalty.

3. Compliance Conference. A person may request a compliance conference with an authorized representative of the division to review the compliance status of any condition or practice at any operation.

3.1. A compliance conference may not change the required abatement period contained in a notice of violation.

3.2. The division shall grant any request for a compliance conference received within the abatement period contained within a notice of violation.

3.3. The division may accept or reject any good faith request to conduct a compliance conference received after the abatement period contained within a notice of violation.

**R649-11-2. Provisions of State Enforcement.****1. Notice of Violation.**

1.1. During any division inspection, including a record review, if the division determines that a violation exists that does not cause imminent danger or harm, the division may issue a notice of violation to the person fixing a reasonable time, not to exceed 90 calendar days, for the abatement of the violation and providing opportunity for a hearing before the division as articulated in Rule R649-10.

1.2. A notice of violation shall be issued in writing, signed by an authorized representative of the division, and shall set forth with reasonable specificity:

1.2.1. the nature of the violation;

1.2.2. the remedial action required, which may include interim required actions;

1.2.3. a reasonable time for abatement; and

1.2.4. a reasonable description of the portion of the oil and gas operation to that it applies.

1.3. The division may extend the time set for abatement or for accomplishment of an interim step if the failure to meet the time previously set was not caused by lack of diligence on the part of the person. The total time for abatement under a notice of violation, including any extensions, may not exceed 90 calendar days from the date of issuance except as provided for in Subsection 1.5.

1.4. The division will terminate a notice of violation by written notice to the person when the division determines that violations listed in the notice of violation have been abated. If any violations have been abated within the time for abatement provided in the notice of violation, then no administrative penalty shall be assessed. Termination of a notice of violation will not affect the right of the division to assess administrative penalties for those violations that the person failed to abate within the time for abatement provided in the notice of violation.

1.5. Circumstances that may qualify an oil and gas operation for an abatement period of more than 90 days are:

1.5.1. where climatic conditions preclude complete abatement within 90 days;

1.5.2. where due to climatic conditions, abatement within 90 days would clearly cause more environmental harm than it would prevent;

1.5.3. where the person's action to abate the violation within 90 days would violate safety standards; or

1.5.4. other circumstances beyond the control of the person as deemed by the division.

**2. Division Enforcement Order.**

2.1. The division shall immediately order a cessation of oil and gas operations if, during any division inspection, it finds any violation, which:

2.1.1. creates an imminent danger to the health or safety of the public; or

2.1.2. is causing or can reasonably be expected to cause significant, imminent harm to the environment.

2.2. Oil and gas operations conducted by any person without valid approval constitutes grounds for cessation of those oil and gas operations.

2.3. If the cessation order does not completely abate the conditions described in Subsection 2.1 in the most expeditious manner possible, the division shall impose affirmative obligations on the person to abate the violation. The order shall specify the time by which abatement shall be accomplished.

2.4. When a notice of violation has been issued and the person fails to abate the violation within the abatement period, then

the division shall issue a division enforcement order. A division enforcement order shall require the person to take each steps the division deems necessary to abate the violations covered by the order in the most expeditious manner possible.

2.5. A division enforcement order issued shall be in writing, signed by the authorized representative of the division who issued it, and shall set forth with reasonable specificity:

2.5.1. the nature of the violation;

2.5.2. the remedial action or affirmative obligation required, including interim required actions, if appropriate;

2.5.3. the time established for abatement;

2.5.4. a reasonable description of the portion of the oil and gas operation to which it applies; and

2.5.5. that the order shall remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the division.

2.6. Activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided.

2.7. The division may modify, terminate, or vacate a division enforcement order or cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person.

2.8. The division will terminate a division enforcement order or cessation order by written notice to the person, when it is determined that the conditions, practices, or violations listed in the order have been abated. If the violations have been abated within the time for abatement provided in the division enforcement order, then no administrative penalty shall be assessed. Termination of a division enforcement order or cessation order will not affect the right of the division to assess administrative penalties for those violations that the person failed to abate within the time for abatement provided in the notice of violation.

**3. Service of Notices of Violation, Division Enforcement Order and Administrative Penalties.**

3.1. Notices of violation, division enforcement orders, and proposed administrative penalties assessment shall be served on the person promptly after issuance by one of the following methods:

3.1.1. Personal service, in accordance with the Utah Rules of Civil Procedure, Rule 4. Service shall be effective on the date of personal service.

3.1.2. First posting a copy of the notice at the oil and gas operation location or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the person at the last address provided to the division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.2. Service on the person shall be sufficient if service is made upon:

3.2.1. an officer of a corporation;

3.2.2. the person designated by law for service of process, or the registered agent for the corporation; or

3.2.3. an owner, or partner of an entity other than a corporation.

**3.3. Proof of Service.**

3.3.1. Proof of personal service shall be made in accordance with the Utah Rules of Civil Procedure, Rule 4.

3.3.2. Proof of posting or personal delivery may be made by a signed written statement of the person effecting posting or personal delivery stating the date, time, and place of posting, and, if personal delivery, the person to whom the notice was delivered.

**R649-11-3. Administrative Penalty Assessment.**

1. General. Any person who violated Title 40, Chapter 6, Board and division of oil, gas and mining, or a division rule, order or permit may be subject to an administrative penalty.

2. Maximum Administrative Penalty Amounts.

2.1. An administrative penalty on any person may not exceed \$5,000 per day for each day of a violation.

2.2. If the board determines that a violation is a willful violation, the board may impose an administrative penalty on that person not to exceed \$10,000 for each day of the violation.

2.3. Administrative penalties assessed by the division or the board may not exceed \$200,000 per violation per person.

3. Days of Violation. The duration of a violation shall be calculated in days as follows:

3.1. A reporting or other minor violation that presents low direct risk or threat of harm to public health, safety, and welfare, or the environment, begins on the day that the report should have been made or other required action should have been taken, and continues until the report is filed or the required action is completed to the division's satisfaction.

3.2. Violations that present a possibility of distinct, identifiable actual or threatened adverse impact, or violations that present a significant probability of actual or threatened adverse impact, begin on the date the violation was discovered or should have been discovered through the exercise of reasonable care and continue until the appropriate corrective action is completed to the division's satisfaction.

4. Penalty Calculation. The base penalty for each violation shall be calculated based on the division's penalty schedule. Each violation is initially assessed at the minor violation rate, but may be escalated to the major violation rate in accordance with Section R649-11-3.

5. Issuance of Proposed Assessments.

5.1. If a violation is not abated prior to the end of the abatement period specified for that violation, the division shall issue a proposed assessment to the person containing the penalty amount after the abatement period ends.

5.1.1. Failure by the division to serve a proposed assessment within 30 days will not be grounds for dismissal of any part of such assessment unless the permittee or operator:

5.1.1.1. proves actual prejudice as a result of the delay; and

5.1.1.2. makes a timely objection to the delay.

5.2. Upon abatement of the violation, or when the maximum penalty amount has been reached, the division will issue a final assessment to the person containing the final penalty amount.

5.2.1. Failure by the division to serve a final proposed assessment within 30 days will not be grounds for dismissal of any part of such assessment unless the permittee or operator:

5.2.1.1. proves actual prejudice as a result of the delay; and

5.2.1.2. makes a timely objection to the delay.

6. Violations Designated as Class I.

6.1. Violations that present a low direct risk or threat of harm to public health, safety and welfare, or the environment, including:

(a) Section R649-3-1 bonding violations;

(b) Section R649-3-36 shut-in and temporarily abandoned wells violations;

(c) Section R649-3-15 pollution and surface damage violations;

(d) Section R649-3-34 well site restoration violations;

(e) Section R649-3-16 reserve pit closure violations;

(f) Section R649-9-2 improperly secured disposal facility violations;

(g) Section R649-9-2 minor leaks and spills violations;

(h) Section R649-9-3 garbage and solid waste in evaporation pit violations;

(i) Section R649-9-3 inadequate supervision violations;

(j) Section R649-9-4 failure to monitor leak detection system violations;

(k) Section R649-9-10 inadequate construction notification violations;

(l) Section R649-9-11 facility records for review violations; and

(m) any other violation not specifically listed in the rule.

7. Violations Designated as Class II.

7.1. Violations that present a possibility of distinct, identifiable, actual or threatened adverse impacts to public health, safety, and welfare, or the environment, including:

(a) Section R649-3-22 commingling without approval;

(b) Section R649-3-23 completion/recompletion without approval;

(c) Section R649-3-32 not reporting an incident;

(d) Section R649-3-20 flaring or venting without approval;

(e) Section R649-3-23 and R649-3-4 not adhering to the approved procedure or conditions on an APD or sundry notice;

(f) Rule R649-5 and R649-9 violation of permit conditions, such as UIC or facility;

(g) Section R649-5-2 injecting over approved pressure;

(h) Section R649-9-4 less than 2 feet freeboard;

(i) Section R649-9-4;

(j) Section R649-9-5;

(k) Rule R649-8 false reporting; and

(l) any other violation that presents a possibility of distinct, identifiable, actual or threatened adverse impacts to public health, safety and welfare, or the environment.

8. Violations Designated as Class III.

8.1. Violations that present a significant probability of actual or threatened adverse impact to public health, safety, and welfare, or the environment, including:

(a) Section R649-3-4 drilling or spudding without an approved permit;

(b) Section R649-3-24 P&A without approval;

(c) Section R649-3-15 disposal of fluids in unapproved or improper facility or by improper method;

(d) Rule R649-5 injection into reservoir or formation without approval;

(e) Section R649-9-3 facility operating without a permit;

(f) Section R649-9-4 pits overtopped;

(g) Section R649-9-4 breached pit; and

(h) any other rule violation that presents a significant probability of actual or threatened adverse impact to public health, safety and welfare, or the environment.

9. Administrative Penalty Schedule.

9.1. Penalty Schedule. The division's penalty schedule establishes a daily penalty based on the classification of the rule violation, Class I, II, or III as provided in Subsection (6), (7), and (8), and the degree of actual or threatened adverse impact resulting from the violation, minor or major as provided in Subsections (9.2) and (10).

TABLE

9.1.1. Daily Penalty Schedule

Violation	Class I	Class II	Class III
Degree:			
Minor	\$750	\$1,500	\$5,000
Major	\$1,500	\$5,000	\$10,000

9.2. Degree of actual or threatened adverse impact. A minor violation and associated penalty amount may be increased to a major violation and penalty amount based on the degree of actual or threatened adverse impact to public health, safety and welfare, or the environment resulting from the violation. The division shall determine the degree of actual or threatened adverse impact to public health, safety, and welfare, or the environment, based on the totality of circumstances in each case that may involve increasing a Class I violation to a Class II or Class III violation, or increasing a Class II violation to a Class III violation.

10. Penalty Adjustments based on Aggravating and Mitigating Factors. The division shall consider aggravating and mitigating factors when determining if a violation is minor or major. These factors shall include:

10.1. Aggravating factors:

10.1.1. The violation involved a substantial departure from the standards of ordinary care of a reasonable prudent person.

10.1.2. The violation was a willful violation.

10.1.3. The violation had a significant negative impact on human health or the environment.

10.1.4. The violation resulted in significant waste of oil and gas resources.

10.1.5. The violation had a significant negative impact on correlative rights of other parties.

10.1.6. The violator was nonresponsive to the division in correcting or responding to the violation.

10.1.7. The violator benefited economically from the violation, in that case the amount of such benefit shall be taken into consideration.

10.1.8. The violator has a history of previous violations at the particular well or facility.

10.2. Mitigating factors:

10.2.1. The violator self-reported the violation.

10.2.2. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

10.2.3. The cause of the violation was outside of the violator's reasonable control and responsibility.

10.2.4. The violator made a good faith effort to comply with applicable requirements prior to the division learning of the violation.

10.2.5. The violator has demonstrated a history of compliance with division rules, orders, and permits.

10.2.6. The violator has not been served with a notice of violation within the twenty-four-month period prior to the subject violation at issue.

11. Repeat Violations. The division shall consider the history of previous violations at a particular well or facility when determining an appropriate administrative penalty. If the person has three or more violations of the same minor violation in the twenty-four-month period immediately preceding the violation at issue, the minor violation shall escalate to a major violation.

12. Unabated Violations. The division may request an emergency order from the board requiring well or facility operations

be suspended for any unabated violation where the maximum penalty amount has accrued. Operations may only resume upon abatement of the violation and payment of the penalty.

13. Appeals of Administrative Penalties. An administrative penalty assessed by the division may be appealed by filing a request for agency action within 30 days of the assessment following the procedures provided in Rule R649-10.

**KEY: oil and gas law**

**Date of Enactment or Last Substantive Amendment: 2020**

**Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.; 63G-4**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R651-601-10	Filing No. 53117

Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	Ste 116	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84114-6001	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov

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

General Information

2. Rule or section catchline:
R651-601-10. Posted
3. Purpose of the new rule or reason for the change:
This amendment would clarify what the term "posted" means.
4. Summary of the new rule or change:
With the new rule on camping check-in and check-out times, the Division of Parks and Recreation (Division) use the term "posted" to indicate locations where the check-in and check-out times will be given as notices. These locations would be physically at the parks and on printed and web-based documents. There will be variety of check-in and check-out times throughout the parks.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
There is no cost or savings to the state budget. This rule clarifies what is already taking place in state parks.			
<b>B) Local governments:</b>			
There is no cost or savings to local governments because the amendment affects campsites within state parks. This rule clarifies what is already happening within state parks.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There is no cost or savings to the small businesses. This amendment is for clarification purposes.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There is no cost or savings to non-small businesses. This rule amendment clarifies the definition of what "posted" means. This is already taking place within state parks.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
There is no cost or savings to persons other than small businesses, non-small businesses, state or local government entities. This rule amendment would clarify what is already taking place in state parks.			
<b>F) Compliance costs for affected persons:</b>			
There are no compliance costs for this amendment. This is for clarification purposes only.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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

<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
No fiscal impact.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Brian Steed, Executive Director			

**Citation Information**

<b>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):</b>		
Section 79-4-304	Section 79-4-601	Section 41-22-10
Section 79-4-203		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	12/15/2020

<b>10. This rule change MAY become effective on:</b>	12/22/2020
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**

<b>Agency head or designee, and title:</b>	Jeff Rasmussen, Director	<b>Date:</b>	11/06/2020
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**R651. Natural Resources, Parks and Recreation.**

**R651-601. Definitions as Used in These Rules.**

**R651-601-10. Posted.**

"Posted" means ~~[displayed printed instruction or information]~~ law and rule notices that are placed physically in prominent locations or are listed on official state park documents, receipts, permits or websites.

**KEY: parks, off-highway vehicles**

**Date of Enactment or Last Substantive Amendment:** ~~February 24, 2020~~

**Notice of Continuation:** June 13, 2018

**Authorizing, and Implemented or Interpreted Law:** 41-22-10; 79-4-203; 79-4-304; 79-4-601

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R651-606</b>	<b>Filing No. 53116</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Parks and Recreation	
<b>Room no.:</b>	Ste 116	
<b>Street address:</b>	1594 West North Temple	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146001	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6001	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tammy Wright	801-538-7359	tammywright@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R651-606. Camping
<b>3. Purpose of the new rule or reason for the change:</b>
As our parks have become increasingly busier, there has been some concern the Division of Parks and Recreation (Division) is turning away overnight stays when there may be space available due to no show reservations.
<b>4. Summary of the new rule or change:</b>
The way the current rule is written, the Division doesn't have authority to reassign vacancies, even when the Division knows the site or lodging will go unused. This amendment would allow the Division to reassign vacant campsites when the Division is confident that the reservations are not going to be used, so the sites do not sit empty.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no cost or savings to the state budget. The amendment could allow for an additional source of revenue, but it is unknown if it would be or how much, so those are inestimable.
<b>B) Local governments:</b>
There is no cost or savings to local governments because the amendment affects campsites within state parks. The fees already exist and are not new.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no cost or savings to the small businesses because the amendment affects campsites within state parks and is for those sites that would be a "no show" type of situation.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There is no cost or savings to non-small businesses. This amendment affects campsites within state parks and are not new fees associated with camping.
<b>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):</b>
There is no cost or savings to persons other than small businesses, non-small businesses, state or local government entities than what would already occur if

someone was reserving a campsite. This is not a new fee requirement.

**F) Compliance costs for affected persons:**

There are no compliance costs for this amendment. Camping fees already exist.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

No fiscal impact.

**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 79-4-501

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. 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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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:** Jeff Rasmussen, Director  
**Date:** 11/06/2020

**R651. Natural Resources, Parks and Recreation.**

**R651-606. Camping.**

**R651-606-1. Permit Required for Camping in Undeveloped Areas.**

No person shall camp in undeveloped locations of a park area without proper permit.

**R651-606-2. ~~Reserved~~ Campsite[s] Overnight Facility and Park Lodging Unit Occupancy ~~May Not Be Taken~~.**

a. No person shall occupy or otherwise use a campsite, overnight facility or park lodging unit when it is occupied or reserved for another person.

b. If a reserved campsite, overnight facility or park lodging unit is not occupied within 24 hours of the reservation date check-in time, park management may reassign the campsite, overnight facility or park lodging unit to another individual.

**R651-606-3. Maximum Occupancy of Campsites.**

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

**R651-606-4. Payment Required Before Occupancy of Campsite.**

No person shall occupy camping facilities prior to payment of required fees.

**R651-606-5. Time-Limit in Campsite May Not Be Exceeded.**

Camping is limited to 14 consecutive days at all campgrounds except for designated long-term campsites where a long-term camping agreement has been signed by the occupant and the park manager.

**R651-606-6. Use of Showers.**

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

**R651-606-7. Camping Only in Designated Areas.**

All persons shall park or camp only in areas designated for those purposes.

**R651-606-8. ~~Time by Which Campsite[s] Overnight Facility and Park Lodging Unit Shall Be Vacated~~ Occupancy, Check-out and Check-in times.**

~~All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit. Unless approved by park management, no person shall occupy a campsite, overnight facility or park lodging unit:~~

- a. After the posted check-out time; or
- b. Prior to the posted check-in time

**R651-606-9. Clean-up of Campsite Required.**

All persons shall remove all personal property, debris and litter prior to departing the site.

**R651-606-10. Quiet Hours.**

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10:00 p.m. to 7:00 a.m., except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.

**KEY: parks**

**Date of Enactment or Last Substantive Amendment:** ~~July 25, 2017~~ **2020**

**Notice of Continuation:** June 7, 2018

**Authorizing, and Implemented or Interpreted Law:** 79-4-501

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R657-48	Filing No. 53118

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room no.:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources

<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R657-48. Wildlife Sensitive Species
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being repealed pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to sensitive species in Utah.
<b>4. Summary of the new rule or change:</b>
This rule is repealed in its entirety.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
DWR has determined that this repeal does not create a cost or savings impact to the state budget or DWR's budget.
<b>B) Local governments:</b>
The proposed repeal of this entire rule does not create any direct cost or savings impact to local governments.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
The proposed repeal of this rule will not directly impact small businesses because a service was not required of them.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
The proposed repeal of this rule will not directly impact non-small businesses because a service was not required of them.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b>

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This repeal does not have the potential to create a cost impact.

**F) Compliance costs for affected persons:**

DWR has determined that this repeal will not create additional costs or savings.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

After conducting a thorough analysis, it was determined that this repeal will not result in a fiscal impact to businesses.

**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 23-14-18	Section 23-14-19	
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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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	10/19/2020
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**R657. Natural Resources, Wildlife Resources.**

~~[R657-48. Wildlife Sensitive Species.~~

~~**R657-48-1. Authority and Purpose.**~~

- ~~\_\_\_\_\_ (1) Pursuant to Section 23-14-19 of the Utah Code, this rule:~~
- ~~\_\_\_\_\_ (a) establishes the process for designating wildlife sensitive species as part of an effort to prevent further imperilment of wildlife species native to Utah and preclude additional listings under the ESA;~~
- ~~\_\_\_\_\_ (b) defines the Utah Sensitive Species List; and~~
- ~~\_\_\_\_\_ (c) defines the manner in which the Sensitive Species List is intended to be used.~~

**R657-48-2. Definitions.**

- ~~(1) The terms used in this rule are defined in Section 23-13-2.~~
- ~~(2) In addition:~~
- ~~(a) "Committee" means the Wildlife Sensitive Species Advisory Committee.~~
- ~~(b) "Department" means the Department of Natural Resources.~~
- ~~(c) "Division" means the Division of Wildlife Resources within the Department.~~
- ~~(d) "ESA" means the federal Endangered Species Act.~~
- ~~(e) "Executive Director" means Executive Director of the Department.~~
- ~~(f) "Interested Person" means an individual, firm, association, corporation, limited liability company, partnership, commercial or trade entity, any agency of the United States Government, the State of Utah, its departments, agencies and political subdivisions.~~
- ~~(g) "Wildlife sensitive species" means a native wildlife species or subspecies within the state that is undergoing or is likely to undergo substantial declines in population size or distribution, throughout significant portions of its range within the state, without cooperative management intervention or mitigation of threats.~~
- ~~(h) "Wildlife Sensitive species designation" means the decision to bestow or remove wildlife sensitive species status on a wildlife species or subspecies pursuant to this rule.~~
- ~~(i) "Utah Sensitive Species List" means the list of all current state sensitive species.~~

**R657-48-3. Department Responsibilities.**

- ~~(1) There is established a Wildlife Sensitive Species Advisory Committee within the Department of Natural Resources.~~
- ~~(2) The Department shall provide staff support, arrange meetings, keep minutes, and prepare and distribute final recommendations.~~

**R657-48-4. Committee Membership and Procedure.**

- ~~(1) Committee membership shall consist of:~~
- ~~(a) the Executive Director of the Department;~~
- ~~(b) the Director of the Utah Public Lands Policy Coordinating Office or a designee;~~
- ~~(c) the Director of the Division or a designee;~~
- ~~(d) the Director of the Division of Oil, Gas and Mining or a designee;~~
- ~~(e) the Director of the Division of Water Resources or a designee; and~~
- ~~(f) any other Department Division heads or designees as determined by the Executive Director of the Department.~~
- ~~(2) The Executive Director shall serve as chair.~~
- ~~(3) Three members, consisting of the Executive Director, the Division Director and the Director of the Division of Oil, Gas and Mining, shall constitute a quorum for meetings of the Committee.~~
- ~~(4) The Committee shall meet as specified by the Executive Director.~~
- ~~(5) The Division Director shall submit all proposed wildlife sensitive species designations to the Executive Director for Committee review:~~
- ~~(i) The Division shall support its proposals for wildlife sensitive species designations with:~~
- ~~(A) studies, investigations and research supporting the need for the designations;~~
- ~~(B) field survey and observation data; and/or~~

~~(C) federal, state, local and academic information on habitat, historical and current species distribution, threats to the species, population trends, and/or other data or information collected in accordance with generally accepted scientific techniques and practices, including findings expressed in the Utah Wildlife Action Plan.~~

~~(6) The Department will provide an assessment of potential impacts of the proposed designations and the existing social and economic needs of the affected communities and interests.~~

**R657-48-5. Public Participation and Setting of Meeting Agenda.**

- ~~(1)(a) All meetings of the Wildlife Sensitive Species Advisory Committee shall comply with the Utah Open and Public Meetings Act, Utah Code Ann. 52-4-101 et seq.~~
- ~~(b) The meeting agenda shall consist of items determined by the Executive Director, and copies shall be sent to Committee members.~~
- ~~(c) The agenda shall be posted on the Division website and distributed to the Committee members at least 28 calendar days prior to the meeting.~~
- ~~(2) Any interested person may:~~
- ~~(a) submit comments on proposed wildlife sensitive designations;~~
- ~~(i) comments must be submitted in writing to the Executive Director for review and must be submitted at least seven calendar days prior to the meeting; or~~
- ~~(b) request to make an oral presentation before the Committee.~~
- ~~(i) An interested person seeking to make a presentation before the Committee concerning any matter under review, must submit a written request and supporting documentation to the Executive Director at least seven calendar days prior to the meeting.~~

**R657-48-6. Committee Review Actions.**

- ~~(1) In conducting a review of issues, the Committee may:~~
- ~~(a) require additional information from the Division, the Department or interested persons;~~
- ~~(b) require the Division or interested persons to make presentations before the Committee or provide additional documentation in support or opposition of the recommendation;~~
- ~~(c) schedule additional meetings where public interest or agency concern merits additional discussion;~~
- ~~(d) undertake additional review functions as needed; or~~
- ~~(e) consider the need for involvement of other persons or agencies, or whether other action may be needed.~~
- ~~(2) Following the Committee's review and recommendation, the Executive Director shall make a final determination and, if warranted, recommend the approval of any or all proposed wildlife sensitive species designations to the Wildlife Board.~~
- ~~(3) The Executive Director's decision will be announced at that meeting, or the next formal meeting, on the proposed wildlife sensitive species designations or habitat designations, unless an alternative time is required by federal or state law, or rule.~~

**R657-48-7. Wildlife Sensitive Species Designation Process.**

- ~~(1) A wildlife sensitive species designation shall be made only after the Executive Director, following consideration of the Committee's recommendations, has made a formal written recommendation to the Wildlife Board, and after that Board has considered:~~
- ~~(a) the Executive Director's recommendation, and all comments on such recommendation; and~~

NOTICES OF PROPOSED RULES

~~(b) all data, testimony and other documentation presented to the Committee and the Wildlife Board pertaining to such proposed designation.~~

~~(2) All wildlife sensitive species designations shall be made pursuant to the procedures specified in this rule~~

~~(3) The Wildlife Board may approve, deny or remand the proposed wildlife sensitive species designation recommendation to the Executive Director.~~

~~(4) Until a proposed wildlife sensitive species designation is finalized, the proposed designation may not be used or relied upon by any governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.~~

~~(5) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife sensitive species designations as part of the administrative record and make such information available, subject to the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.~~

~~(6) The Division shall maintain the Utah Sensitive Species List and update the list as necessary to maintain up to date status information on sensitive species which change because of:~~

~~(a) wildlife species' name changes due to taxonomic revisions;~~

~~(b) new wildlife sensitive species are designated pursuant to this rule; or~~

~~(c) wildlife sensitive species status is removed from species pursuant to this rule.~~

**~~R657-48-8. Availability and Intended Uses.~~**

~~(1) The Division shall make available by common electronic means on its website the wildlife sensitive species which are designated by this rule.~~

~~(2) Wildlife sensitive species designations are intended to inform natural resource management practices across the state by highlighting which wildlife species may warrant increased conservation attention through such means as habitat restoration, active species management, and avoidance, reduction, and mitigation of impacts, with ultimate goals of reducing the likelihood of future listings under the Endangered Species Act, and conserving the diversity of wildlife species native to Utah.~~

~~(3) Wildlife sensitive species designations may not be used by governmental entities as a basis to involuntarily restrict the private property rights of landowners and their lessees or permittees.~~

**KEY: sensitive species**

**Date of Enactment or Last Substantive Amendment: December 31, 2018**

**Notice of Continuation: May 2, 2016**

**Authorizing, and Implemented or Interpreted Law: 23-14-19; 63-34-5(2)(a)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-58	Filing No. 53119

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources

<b>Room no.:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R657-58. Fishing Contests and Clinics
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to fishing contests and clinics. The proposed rule amendments simplified the process for conducting fishing contests and clinic and allows for an electronic application process.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule: 1) simplify the process to conduct fishing contests or clinics in Utah; 2) create a simplified and straightforward set of criteria that contest organizers can use to determine whether a Certificate of Registration is required; 3) remove the designated differences between warmwater and coldwater species to simplify the application process; and 4) establish an online application process.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These changes can be initiated within the current workload and resources of DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendments simplifies a state agency process, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does

not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**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**):

These amendments do not have the potential to create a cost impact to those individuals wishing to conduct a fishing contest or clinic.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those conducting fishing contests or clinics in Utah.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

**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 23-14-18	Section 23-14-19	
------------------	------------------	--

**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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
--------------------------------------------	------------

<b>10. This rule change MAY become effective on:</b>	12/22/2020
------------------------------------------------------	------------

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**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	10/19/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-58. Fishing Contests and Clinics.**

**R657-58-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule to provide the standards and procedures for fishing contests and events including:

- (a) ~~[Type I]~~ Certified fishing contests;
- (b) ~~[Type II fishing]~~ tagged fish contests; and
- ~~[e]~~ tagged fish contests; and
- ~~d]~~(c) fishing clinics.

(2) Any violation of, or failure to comply with, any provision of this rule or any specific requirements in a Certificate of Registration issued pursuant to this rule may be grounds for revocation or suspension of the Certificate of Registration, as determined by the division.

**R657-58-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and R657-13-2.

(2) In addition:

(a) "Certificate of Registration (COR)" means a license or permit issued by the division that authorizes a contest organizer to conduct a contest and ~~spells out~~ outlines any special provisions and conditions that must be followed.

(b) "[e]Cold water fish species" means: ~~mountain whitefish, Bonneville whitefish, Bear Lake~~ any fish in the family Salmonidae, salmon, trout, whitefish, ~~Bonneville cisco, Bear Lake cutthroat, Bonneville cutthroat, Colorado River cutthroat, Yellowstone cutthroat, rainbow trout, lake trout, brook trout, arctic~~ char, grayling, ~~brown trout,~~ and ~~kokanee salmon~~ associated hybrids.

(c) "[e]Cull" or "high-grade" means to release alive and in good condition, a fish that has been held as part of a possession limit for the purpose of including larger fish in the possession limit.

(d) "[f]Fishing clinic" means an organized gathering of anglers for non-competitive, educational purposes that does not offer cash, awards or prizes for their individual or team catches.

(e) "[h]Live weigh" or "live weigh-in" means that fish are held in possession by contest participants and transported live to a specified location to be weighed.

(f) "[p]Possession" means active or constructive possession.

(g) "[t]Tagged fish contest" means any certified fishing contest where prizes are awarded for the capture of fish previously tagged or marked specifically for that contest.

(h) "[Type I]Certified fishing contest" means a competitive event ~~for warm or cold water fish species, other than a tagged fish contest,~~ that meets any of the following criteria:

- (i) involves 50 or more participants ~~or 25 or more boats~~ per water per day;
- (ii) includes cash and ~~[a]~~ or prizes awarded individually or cumulatively per year at \$2,000 or more for a contest or a series of contests; ~~[or]~~
- (iii) utilizes a live weigh-in ~~[-]; or~~

~~(i)iv~~ ["Type II fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets all of the following criteria:

- ~~(a)~~ involves fewer than 50 contestants or fewer than 25 boats;
- ~~(b)~~ includes cash and/or prizes awarded individually or cumulatively per year at less than \$2,000 for a contest or a series of contests; and
- ~~(c)~~ does not utilize a live weigh in.
- ~~(j)~~ "warmwater fish species" means: walleye, yellow perch, striped bass, largemouth bass, white bass, smallmouth bass, bullhead, channel catfish, black crappie, northern pike, green sunfish, wipers, bluegill, tiger muskellunge, common carp, and burbot]any tagged fish contest.

~~(v)~~ Certified fishing contest does not include any event where fish are not legally possessed by participants.

~~(i)~~ "Warmwater fish species" means any species not considered to be included in the definition of coldwater fish species.

**R657-58-3. Certificate of Registration (COR) and General Requirements.**

(1) Regardless of the size or type of contest, ~~all~~ each boat operator[s] must complete the Mussel Aware Boater Program online training provided at <https://dwrapps.utah.gov/wex/dbconnection.jsp?examnbr=504688>, and display the completed "decontamination certification form" on the dashboard of the boat transport vehicle for the duration of the fishing contest.

(2) Regardless of the size or type of contest, the contest sponsor shall verify and confirm that ~~all~~ each boat operator[s] participating in the fishing contest possess a completed Mussel Aware Boater Program "decontamination certification form."[-]

(3) A COR is required for ~~all~~ each ~~[Type I]certified~~ fishing contest[s] and all tagged fish contests]. The requirements are listed in ~~[s]Sections R657-58-4 through R[657-58-6]~~657-58-5.

~~(4)~~ [A COR is not required for Type II fishing contests and fishing clinics.

~~(5)~~ A COR is valid for only one fishing tournament[~~tagged fish contest~~] on one water.

~~(6)5~~ The division may request public comment before issuing a COR if, in the opinion of the division, the proposed contest has potential impacts to the public or could substantially impact a public fishery.

~~(7)6~~(a) A COR may be denied for:

- (i) failure to comply with the fishing ~~[proclamation]~~ guidebook and rule;
- (ii) potential for resource damage;
- (iii) location;
- (iv) occurrence on a legal holiday or Free Fishing Day;
- (v) public safety issues;
- (vi) conflicts with the public;
- (vii) failure to adequately protect state waters from invasive species;
- (viii) problems with the ~~[applicants]~~ applicant's prior performance record; and
- (ix) failure to comply with other state laws, including those applying to raffles and lotteries in Utah.

(b) The reason for denial will be identified and reported to the applicant in a timely manner. The division may impose conditions on the issuance of the Certification of Registration in order to achieve a management objective or adequately protect a fishery. Any conditions will be listed on the COR.

~~(8) All COR applications submitted for Type I fishing contests must include a written protocol for participants to disinfect boats and equipment to prevent the spread of aquatic nuisance species. The protocol must be consistent with division policy and rule.~~

~~(9)(a) COR applications are available [at all division offices and ]online at the division[']s website.~~

(b) Applications must be received by the division at least 45 days prior to the contest. In some cases a public comment process may alter the 45-day COR review period.

(c) Variances to the COR review period may only be granted by the director.

~~(10) A COR application must include:~~

~~(a) [a copy of proposed rules for the contest, and~~

~~(b)] a complete schedule of entry fees, cash awards and prize values[;];~~

~~(11) Anyone conducting a Type I fishing contest or tagged fish contest must complete a post-contest report and that report must be received by the division within 30 days after the event is completed]~~

~~(b) documentation of the number of participants; and~~

~~(c) information regarding the use of live weigh-in.~~

~~(12) Anyone conducting a [Type I]certified fishing[contest or tagged fish] contest who fails to obtain a COR or to follow the rules set by the division may be prohibited from conducting any fishing contests, and may be subject to other penalties.~~

**R657-58-4. Requirements for [Type I]Certified Fishing Contests[for Warm Water Fish Species].**

(1) A COR from the Division of Wildlife Resources is required for any [Type I]certified fishing contest[for any warm water fish species].

(2) [All]Each participant[s-boats] must be readily identifiable as such at a distance of 100 yards.

(3) Contestants may not possess fish species, numbers of fish, or sizes of fish that are in violation of the proclamation approved by the Utah Wildlife Board.

**~~R657-58-5. Requirements for Type I Fishing Contests for Cold Water Fish Species.~~**

~~(1) A COR from the division is required for all Type I fishing contests for cold water fish species.~~

~~(2) Type I fishing contests for cold water fish may not:~~

~~(a) involve more than 200 participants.~~

~~(b) offer more than \$2,000 in total prizes.~~

~~(c) utilize live weigh ins.~~

~~(3) Type I fishing contests for cold water fish species are prohibited on waters where the Wildlife Board has imposed more restrictive special harvest rules for targeted cold water fish species including tackle restrictions, size restrictions, and other exceptions to the general fishing regulations, except at Seofield Reservoir where Type I fishing contests are allowed for rainbow trout only.~~

~~(4) There is no limit to the number of participants or total prizes at Flaming Gorge and Echo Reservoirs.~~

~~(5) Type I fishing contests for cold water fish species may not be held~~

~~(a) on Free Fishing Day except at Echo Reservoir.]~~

~~(6) Fish]4) Coldwater fish taken in [Type I cold water]certified fishing contests may not be culled or otherwise released alive after possession.~~

**~~R657-58-6. Requirements for Tagged Fish Contests.]~~**

~~(1) A COR from the Division of Wildlife Resources is required to conduct any tagged fish contest, regardless of number of contestants or value of prizes or awards.~~

~~(2) If more than one application is received for a water in a year then a drawing will be held to select the applicant to receive the COR.~~

~~(3) Only one tagged fish contest per year may be held on any water.]~~

~~(4) Tagged fish contests must have the start date and end date identified on the COR [A]application.~~

~~(5) Tagging of fish for tagged fish contests must be conducted only by division personnel, or by designated representatives working under the direct supervision of the division.~~

~~(6) Without prior authorization from the division, it is prohibited to:~~

~~(a) tag, fin-clip or mark fish in any way[;]; or~~

~~(b) introduce tagged, fin-clipped or marked fish into a water.~~

~~(7) The organizer of a tagged fish contest will assume [all]responsibility for the contest and the purchase of tags and tagging equipment unless otherwise provided by the division.~~

**KEY: fish, fishing, wildlife, wildlife law**

**Date of Enactment or Last Substantive Amendment: ~~January 10, 2012~~2020**

**Notice of Continuation: January 9, 2018**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-62-26	Filing No. 53120

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R657-62-26. Deployed Military
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Applications.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule waives the combination/hunting license requirement for all resident deployed military members if they miss a bonus or preference point application period while actively deployed.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments allows for deployed military sportsmen to acquire a bonus or preference point during applications periods without having to meet the combination/hunting license requirement, these changes can be initiated within the current workload and resources of DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendment provides a waiver of a DWR requirement, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**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**):

These amendments do not have the potential to create a cost impact to those deployed individuals wishing to participate in the hunting opportunities.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those participating in hunting in Utah.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

**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 23-14-18	Section 23-14-19
------------------	------------------

**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.)

<b>A) Comments will be accepted until:</b>	12/15/2020
--------------------------------------------	------------

<b>10. This rule change MAY become effective on:</b>	12/22/2020
------------------------------------------------------	------------

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**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	10/19/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-62. Drawing Application Procedures.**

**R657-62-26. Deployed Military.**

(1) Notwithstanding any other provision in this rule, a resident serving in the United States Military and deployed in connection with their military service may apply for and receive a bonus point or preference point without acquiring or possessing a hunting or combination license.

(2) To obtain a bonus point or preference point without a hunting or combination license, an eligible resident must:

(a) be deployed at the time of application and during the hunting seasons applicable to the point;

(b) not have previously received a bonus or preference point for the species and hunt type in the same year;

(c) otherwise be eligible to receive a bonus or preference point;

(d) pay a \$10 application fee; and

(e) submit an application to the Division no later than 30 days prior to the opening date of the first season for the species and hunt type corresponding to the bonus point or preference point sought.

(3) The application shall include the following information:

(a) full name, date of birth, Division customer identification number, permanent and current physical address, email address, and any other information required by the Division;

(b) proof of residency; and

(c) copy of official military documentation ordering deployment and specifying its term and location.

(4) A person qualifying for a bonus point or preference point under this section may not surrender and receive a refund on:

(a) an unexpired hunting or combination license previously purchased; or

(b) a previously awarded bonus point or preference point.

(5) For purposes of this section:

(a) "Active duty" means full-time duty in the active military.

(b) "Deployed" means movement from a military personnel's permanent duty station to active duty outside the state of Utah based on orders from military command.

(c) "Military" means the United States Army, Navy, Airforce, Marines, Coast Guard, and National Guard Reserve Units.

(d) "Resident" has the same meaning as defined in Section 23-13-2.

**KEY: \_wildlife, permits**

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

**Notice of Continuation: April 9, 2019**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R722-930	Filing No. 53147

**Agency Information**

<b>1. Department:</b>	Public Safety
<b>Agency:</b>	Criminal Investigations and Technical Services, Criminal Identification
<b>Street address:</b>	3888 W 5400 S
<b>City, state:</b>	Taylorsville, UT 84129
<b>Mailing address:</b>	3888 W 5400 S
<b>City, state, zip:</b>	Taylorsville, UT 84129

Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-965-4018	kgibb@utah.gov
Nicole Borgeson	801-281-5072	nshepherd@utah.gov
Greg Willmore	801-965-4533	gwillmor@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R722-930. Automatic Expungement
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this proposed rule is to implement procedures for processing an automatic expungement as authorized under Section 77-40-111. This authority was established upon the passage of H.B. 431 during the 2019 General Session, which was made effective on 05/01/2020.
<b>4. Summary of the new rule or change:</b>
This rule outlines the procedure by which the Bureau of Criminal Identification (BCI) will receive and process an electronic order to expunge a clean slate eligible criminal case. The process includes removal of information from applicable databases, maintenance of the information for eligible entities to access expunged clean slate eligible cases, and notification requirements to applicable law enforcement entities following expungement of a clean slate eligible case.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
BCI does not anticipate any costs or savings to the state budget as a result of this new administrative rule. This rule only clarifies the steps that must occur in order to process an automatic expungement order for a clean slate eligible criminal case.
<b>B) Local governments:</b>
BCI does not anticipate any costs or savings to local governments as a result of this new administrative rule. This rule only clarifies the steps that must occur in order to process an automatic expungement order for a clean slate eligible criminal case.

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

BCI does not anticipate any costs or savings to small businesses as a result of this new administrative rule. This rule only clarifies the steps that must occur in order to process an automatic expungement order for a clean slate eligible criminal case.

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

BCI does not anticipate any costs or savings to the non-small businesses as a result of this new administrative rule. This rule only clarifies the steps that must occur in order to process an automatic expungement order for a clean slate eligible criminal case.

**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**):

BCI does not anticipate any costs or savings to persons other than small businesses, non-small businesses, state, or local government entities as a result of this new administrative rule. This rule only clarifies the steps that must occur in order to process an automatic expungement order for a clean slate eligible criminal case.

**F) Compliance costs for affected persons:**

BCI does not anticipate any compliance costs for affected persons as a result of this new administrative rule. This rule only clarifies the steps that must occur in order to process an automatic expungement order for a clean slate eligible criminal case.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Department of Public Safety, Jess L. Anderson, 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 not any small or non-small businesses in Utah that will be impacted as a result of the enactment of this rule. This rule specifies the steps that must occur to process an expungement order for a clean slate eligible criminal case including the receipt, verification of eligibility, removal of information from applicable databases, maintenance of data for entities entitled to obtain the information once the case is expunged, and notification to applicable law enforcement agencies regarding the expungement of the case.

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

Jess L. Anderson, 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 77-40-111	Section 77-40-116	Section 77-40-115
Section 77-40-114		

**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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	Greg Willmore, Director	<b>Date:</b>	10/26/2020
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**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-930. Automatic Expungement.**

**R722-930-1. Purpose.**

The purpose of this rule is to establish the procedure by which the Bureau of Criminal Identification will process a court order to expunge clean slate eligible criminal history information.

**R722-930-2. Authority.**

Section 77-40-111 authorizes the department to promulgate rules to implement procedures for processing an automatic expungement.

**R722-930-3. Definitions.**

The terms used in this rule are defined in Section 77-40-102.

**R722-930-4. Procedure for Automatic Expungement Processing.**

(1) Upon electronic receipt of a completed court order to expunge a clean slate eligible criminal case, the bureau shall:

(a) determine whether the clean slate eligible criminal case is contained within the Utah Criminal History database and the Federal Bureau of Investigation's Next Generation Identification database;

(b) remove any information associated with the criminal case from applicable databases;

(c) create a record of the automatic expungement in a separate database for use by authorized entities under Sections 77-40-109 and 77-40-110; and

(d) provide electronic notice to each law enforcement agency identified in the order of expungement.

**KEY: automatic expungement, clean slate eligible case**

**Date of Enactment or Last Substantive Amendment: 2020**

**Authorizing, and Implemented or Interpreted Law: 77-40-111; 77-40-114; 77-40-115; 77-40-116**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R909-3	Filing No. 53158

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Motor Carrier	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R909-3. Standards for Utah School Buses
<b>3. Purpose of the new rule or reason for the change:</b>
This administrative rule incorporates by reference the Standards for Utah School Buses and Operations, and it regulates advertisement allowed on school busses. The purpose of this proposed change is to incorporate the most recently published edition of the Standards for Utah School Buses and Operations.
<b>4. Summary of the new rule or change:</b>
This proposed change incorporates by reference the 2020 Edition of the Standards for Utah School Buses and Operations and makes technical and grammatic changes, which is the most recent edition of those standards.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department of Transportation (Department) does not anticipate this proposed rule change will affect the state's

budget. None of the changes made in the 2020 Edition of the Standards for Utah School Buses and Operations lead to costs or efficiencies.

**B) Local governments:**

This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them, generally.

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

This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to them, generally.

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

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them. It does apply to public school districts and private schools that operate busses. However, the proposed changes will not lead to costs or savings to public school districts or private schools that operate busses because none of the changes made in the 2020 Edition of the Standards for Utah School Buses and Operations lead to costs or efficiencies.

**F) Compliance costs for affected persons:**

Public school districts and private schools that operate busses will be affected by the proposed changes to this rule. However, the proposed changes do not lead to additional costs or savings so there will be no compliance costs for the 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
Carlos M. Braceras, the Executive Director of the Department of Transportation, approves this regulatory impact analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
This proposed rule change will not have a fiscal impact on businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Carlos M. Braceras, PE, Executive Director			

**Citation Information**

<b>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):</b>		
Section 41-6a-1304	Section 41-6a-1309	

**Incorporations by Reference Information**

<b>8. A) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
	<b>First Incorporation</b>

<b>Official Title of Materials Incorporated (from title page)</b>	Standards for Utah School Buses and Operations
<b>Publisher</b>	Utah State Board of Education
<b>Date Issued</b>	Published December 7, 2018
<b>Issue, or version</b>	2020 Edition

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	12/15/2020

<b>10. This rule change MAY become effective on:</b>	12/22/2020
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**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	10/30/2020
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**R909. Transportation, Motor Carrier.**

**R909-3. Standards for Utah School Buses.**

**R909-3-1. Authority and Purpose.**

This rule is enacted under authority of [~~Utah Code~~] Sections 41-6a-1304 and 41-6a-1309 for the purpose of governing the design and operation of school buses and governing the placement of advertisements on school buses.

**R909-3-2. Adoption of Standards for Utah School Buses and Operations Standards 2020~~[+9]~~ Edition.**

(1) In cooperation with the Utah State Board of Education and the Department of Public Safety, the Standards for Utah School Buses and Operations as contained in the 2020~~[+9]~~ Published Edition, in its entirety, is incorporated by reference.

The Standards for Utah School Buses and Operations are published by the Utah State Board of Education and can be found at <https://schools.utah.gov/File/2f934a74-4cbf-4473-ba60-8912a07ae640>

(2) These requirements apply to the design and operation of all school buses in this state when:

NOTICES OF PROPOSED RULES

- (a) owned and operated by any Local Education Agency (LEA) as defined in [Utah Code]Section 53E-3-401;
  - (b) privately owned and operated under contract with a LEA;
- or
- (c) privately owned for use by a private school.

**R909-3-3. Advertisement on School Buses.**

- (1) In addition to the restrictions listed in [Utah Code]Section 41-6a-1309, advertisements placed on a bus may not:
- (a) cover, obscure, or interfere with the operation of any required lighting, reflective tape, emergency exits, or any other safety equipment;
  - (b) be placed within six inches of any required markings, lighting, or other required safety equipment;
  - (c) resemble a traffic control device; or
  - (d) be illuminated or constructed of reflective material.

**KEY:** school buses, safety

**Date of Enactment or Last Substantive Amendment:** ~~July 8, 2019~~2020

**Notice of Continuation:** December 27, 2018

**Authorizing, and Implemented or Interpreted Law:** 41-6a-1304

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R940-6	Filing No. 53160

**Agency Information**

<b>1. Department:</b>	Transportation Commission	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R940-6. Prioritization of New Transportation Capacity Projects
<b>3. Purpose of the new rule or reason for the change:</b>
This administrative rule provides a procedure the Transportation Commission (Commission) follows to satisfy the requirements of Section 72-1-304. The Commission wants to change the rule to improve the prioritization process.
<b>4. Summary of the new rule or change:</b>
The proposed changes add defined terms, delete unnecessary commission duties, add requirements to provide opportunity for public input, add requirements related to Transportation Investment Fund (TIF) Active Transportation Project in a Department Approved Active Transportation Plan, add requirements for nominating a project for prioritization, and add ways to make such nominations.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department of Transportation (Department) does not anticipate these proposed changes will result in any costs or savings to the state budget because they modify procedures the commission already must follow to prioritize new transportation capacity projects.
<b>B) Local governments:</b>
The Department does not anticipate these proposed changes will result in any costs or savings to local governments because this rule does not apply to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The Department does not anticipate these proposed changes will result in any costs or savings to small businesses because this rule does not apply to small businesses.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The department does not anticipate these proposed changes will result in any costs or savings to non-small businesses because 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 these proposed changes will result in any costs or savings to persons other than small businesses, non-small businesses, state, or local government because this rule only applies to the Commission.

**F) Compliance costs for affected persons:**

The only person affected by these proposed changes is the Commission. The changes are procedural and will not cost anything to implement. There are no compliance costs.

**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**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

Carlos M. Braceras, PE, the Executive Director of the Department of Transportation, approves this regulatory impact analysis.

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

This proposed rule change will not have a fiscal impact on businesses, generally.

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

Carlos M. Braceras, PE, 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 72-1-304(4)		
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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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	10/30/2020
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**R940. Transportation, Administration.**

**R940-6. Prioritization of New Transportation Capacity Projects.**

**R940-6-1. Authority and Purpose.**

(1) Authority. The [C]commission makes this administrative rule pursuant to authority delegated by [Utah Code]Subsection 72-1-304(4).

(2) Purpose. This administrative rule is to provide a procedure the [C]commission will follow to satisfy the requirements of [Utah Code]Section 72-1-304.

**R940-6-2. Definitions.**

(1) "Commission" means the Utah Transportation Commission created by [Utah Code]Subsection 72-1-301(1).

(2) "Department" means the Utah Department of Transportation created by [Utah Code]Subsection 72-1-201(1).

(3) "Department Approved Active Transportation Plan" means an active transportation plan approved by the Department~~that the Department has reviewed and approved~~.

(4) "District" means a Public Transit District.

(5)~~(4)~~ "Fixed Guideway Public Transit" means a public transit facility that uses or occupies rail for the use of public transit or a separate right-of-way for the use of public transit such as bus rapid transit systems.

(6)~~(5)~~ "Fund Allocation Percentage" means the percentage of funding for a TIF Active Transportation project, TTIF First and Last Mile project, or TTIF Transit project coming from TIF or TTIF funds.

(7)~~(6)~~ "Fund Request Amount" means the funding amount requested by a local government or district from either TIF or TTIF for a TIF Active Transportation project, TTIF First and Last Mile project, or TTIF Transit project.

(8)~~(7)~~ "In-kind match" means non-cash matches including services (labor), right-of-way, construction materials, or labor/equipment time valued at fair market value.

(9) "Input List" means the list of projects that will be used in the prioritization process.

(10)~~(8)~~ "Match" means the 40% matching funds required by and detailed in [Utah Code]S[ub]section[s] 72-2-124~~(4)(a)(viii) and 72-2-124(9)(e)~~.

(11)~~(9)~~ "Long-Range Transportation Plan" or "LRP" means any one of the five plans developed by the [D]department and the state's four MPOs that forecast the state's transportation needs for the next 20-[-]plus years, also known as the Regional Transportation Plans or RTPs.

(12)~~(10)~~ "Metropolitan P[lan]ning O[rg]anization" or "MPO" means the same as it is defined by [Utah Code]Subsection 72-1-208.5(1).

(13)~~(11)~~ "Required Match Percentage" means the match percentage ~~[(40%)]~~required for TIF Active Transportation projects, TTIF First and Last Mile projects, and TTIF Transit projects.

(14)~~(12)~~ "Statewide S[trategic I]nitiative" or "SSI" means initiatives the Department is required to develop and adopt by [Utah Code]Section 72-1-211.

(15)~~(13)~~ "Strategic Goals" means the Utah Department of Transportation's strategic goals.

(16)~~(14)~~ "TIF Active Transportation Projects" means paved pedestrian or paved nonmotorized transportation projects per [Utah Code]Section 72-2-124

(17)~~(15)~~ "TIF Highway Projects" means projects on state and federal highways per [Utah Code]Section 72-2-124.

(18)~~(16)~~ "Transportation Investment Fund" or "TIF" means the capital projects fund created in 2005 by [Utah Code]Subsection 72-2-124(1).

(19)~~(17)~~ "Transit Transportation Investment Fund" or "TTIF" means the fund within the Transportation Investment Fund of 2005 created by [Utah Code]Subsection 72-2-124(9).

(20)~~(18)~~ "TTIF First and Last Mile Projects" means pedestrian or nonmotorized transportation projects that provides connection to a public transit system per [Utah Code]Section 72-2-124.

(21)~~(19)~~ "TTIF Transit Projects" means public transit capital development projects per [Utah Code]Sub[sec]tion 72-2-124.

(22)~~(20)~~ "UDOT Planning" or "Planning" means the Planning Division of the Program Development Group of the Utah Department of Transportation.

**R940-6-3. Prioritization Requirements.**

The [C]commission, in consultation with the [D]department and the MPOs, will develop a written prioritization process to determine priorities and funding levels of projects in the state transportation systems and capital development of new public transit facilities for each fiscal year, taking into consideration the [D]department's Statewide S[trategic I]nitiatives in Section 72-1-211 and the [D]department's S[trategic G]oals.

**R940-6-4. Prioritization Process.**

(1) The [C]commission's written prioritization process, developed pursuant to the requirements of [Utah Code]Section 72-1-304 and called "New Transportation Capacity Project Prioritization Process," having been reviewed and its implementation voted on in a properly noticed public meeting, is incorporated by reference and may be accessed at this Internet address: [udot.utah.gov/go/projectprioritizationprocess](http://udot.utah.gov/go/projectprioritizationprocess).

~~(2) The Commission will review the written prioritization process annually.~~

~~(a) The Commission will call for and hear public input on the prioritization process during the review of the process.~~

(2)~~(b)~~ The [C]commission will provide notice of proposed amendments to the prioritization process in a public meeting, and provide an opportunity for public comments prior to amending the prioritization process~~[following the public meeting, and after allowing public comments]~~. Amendments to the prioritization process will not affect projects that have already been funded.

(a)~~(e)~~ If a TIF Highway Project is identified in Phase 1 of the LRP and the total project cost estimate is more than \$5,000,000 it will be included in the Input List~~[annual prioritization of projects]~~.

(b)~~(d)~~ The [C]commission may consider additional projects for prioritization beyond those identified in Phase I of the LRP if during the development of the LRP they were determined to be a Phase I need.

(3) If a TIF Active Transportation Project is in a Department Approved Active Transportation Plan and designated by the department, in consultation with the MPOs, as regionally important it will be included in the Input List.

(4) If a TTIF Transit Project is identified in Phase 1 of the LRP it will be included in the Input List.

(a) The commission may consider additional projects for prioritization beyond those identified in Phase I of the LRP if during the development of the LRP they were determined to be a Phase I need.

**R940-6-5. Requirements and Process for Project Nomination by Local Government or District.**

(1) Local governments or districts may nominate projects for prioritization.

(2) The nomination process is as follows:

(a) TIF Highway Projects.

(i) ~~A local government or district may nominate a project to the commission at this Internet address: [udot.utah.gov/go/projectprioritizationprocess](http://udot.utah.gov/go/projectprioritizationprocess). [A local government or district may submit to the Commission a written nomination for a project to be included in the prioritization process.]~~ Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project including why the project is important to the local government or district.

(ii) The [C]commission will determine if the nominated projects will be included in the ~~[annual prioritization of projects]~~ Input List. The factors used in this determination may include, but are not limited to the following:

(A) If, during the development of the LRP, the Project was determined to be a Phase I need.

(B) If there are any proposed additional funding sources.

~~[(C) The Commission will prioritize projects annually.]~~

(b) TIF Active Transportation Projects.

(i) A local government or district may nominate a project to the Transportation Commission at this Internet address: [udot.utah.gov/go/projectprioritizationprocess](http://udot.utah.gov/go/projectprioritizationprocess). ~~[in a format determined by the Commission.]~~ Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The nomination must also demonstrate the following requirements:

(A) That the project is in a Department Approved Active Transportation Plan; and

(B) that the project will mitigate traffic congestion on the state highway system; and

(C) that the local government or district will be responsible for the maintenance of the facility; and

(D) how the [40%]-match ~~[requirement]~~ will be met.

(I) The match may be an in-kind match; and

(II) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example:

For a Fund Request Amount of \$600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be \$400,000. (\$600,000 divided by 0.6) times 0.4 equals \$400,000.

(III) If a nominated project meets the requirements it will be included in the Input List~~[annual prioritization of projects]~~.

(IV) The [C]commission may request additional information from the project sponsor.

~~[(V) The Commission will prioritize projects annually.]~~

(c) TTIF Transit Projects.

(i) A local government or district may nominate a project to the Transportation Commission at this Internet address: [udot.utah.gov/go/projectprioritizationprocess](http://udot.utah.gov/go/projectprioritizationprocess). ~~[in a format determined by the Commission.]~~ Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The nomination must also demonstrate the following requirements:

(A) That there is an ongoing funding plan for maintenance and operations. If the project sponsor is a local government this will require documentation from~~[consultation with]~~ the transit operator that~~[to determine if]~~ the project~~[can]~~ will be accommodated~~[is consistent]~~ within the transit operator's maintenance and operations plans~~[ning]~~.

(B) How the [40%]-match ~~[requirement]~~ will be met.

(I) The match may be an in-kind match; and

(II) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example:

For a Fund Request Amount of \$600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be \$400,000. (\$600,000 divided by 0.6) times 0.4 equals \$400,000.

(C) If the nominated project would provide new fixed guideway public transit service within an MPO boundary, the project is identified in Phase 1 of the LRP or, during the development of the LRP, the Project was determined to be a Phase 1 need.

(I) If a nominated project meets the requirements it will be included in the Input List~~[annual prioritization of projects]~~.

(II) The [C]commission may request additional information from the project sponsor. ~~[(iv) The Commission will prioritize projects annually.]~~

(d) TTIF First and Last Mile Projects.

(i) A local government or district may nominate a project to the Transportation Commission at this Internet address: [udot.utah.gov/go/projectprioritizationprocess](http://udot.utah.gov/go/projectprioritizationprocess). ~~[in a format determined by the Commission.]~~ Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The nomination must also demonstrate the following requirements:

(A) That the local government or district will be responsible for the maintenance of the facility; and

(I) H~~[h]~~ow the [40%]-match ~~[requirement]~~ will be met.

(II) The match may be an in-kind match; and

(III) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example: For a Fund Request Amount of \$600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be \$400,000. (\$600,000 divided by 0.6) times 0.4 equals \$400,000.

(B) That the project will connect and improve access to transit.

(I) If a nominated project meets the requirements it will be included in the Input List~~[annual prioritization of projects]~~.

(II) The [C]commission may request additional information from the project sponsor.

~~[(III) The Commission will prioritize projects annually.]~~

#### **R940-6-6. Commission Discretion.**

The [C]commission, in consultation with the [D]department, may establish additional criteria or use other considerations in establishing funding levels for capacity projects. As provided in Section 72-1-305, ~~[H]~~if the [C]commission approves funding for~~[s]~~ a project over another project that has a higher prioritization rank under the criteria set forth in R940-6-4, the [C]commission will identify the change, and the reasons for it and accept public comment at a public meeting.

**KEY: transportation commission, roads, transit capacity**

**Date of Enactment or Last Substantive Amendment:** ~~[November 21, 2019]~~ 2020

**Notice of Continuation:** November 3, 2015

**Authorizing, and Implemented or Interpreted Law:** 72-1-201; 72-1-304

**End of the Notices of Proposed 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.):	R27-1	Filing No. 50056

### Agency Information

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Fleet Operations	
<b>Street address:</b>	4315 S 2700 W 3rd Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Stewart Cowley		scowley@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R27-1. Definitions
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is established pursuant to Section 63A-9-401, which requires the Department of Administrative Services, Division of Fleet Operations, to establish rules regarding the State Fleet.
<b>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:</b>
There have been no written comments received during the last five-year period.

<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is still required pursuant to Section 63A-9-401. Therefore, this rule should be continued.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Stewart Cowley, Director	<b>Date:</b>	10/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R27-2	Filing No. 50057

### Agency Information

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Fleet Operations	
<b>Street address:</b>	4315 S 2700 W 3rd Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Stewart Cowley		scowley@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R27-2. Fleet Operations Adjudicative Proceedings

**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 established pursuant to Section 63A-9-401, which requires the Department of Administrative Services, Division of Fleet Operations, to establish rules regarding the State Fleet.

**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:**

This rule is required pursuant to Section 63A-9-401. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Stewart Cowley, Director	<b>Date:</b>	10/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R27-3	<b>Filing No. 50051</b>

**Agency Information**

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Fleet Operations	
<b>Street address:</b>	4315 S 2700 W 3rd Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Stewart Cowley		scowley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R27-3. Vehicle Use Standards
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is established pursuant to Subsection 63A-9-401(1)(d), which authorizes the Division of Fleet Operations to establish the requirements for the use of

state vehicles including business and personal use practices and commute standards.

**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:**

This rule is still required pursuant to Subsection 63A-9-401(1)(d). Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Stewart Cowley, Director	<b>Date:</b>	10/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R27-7	<b>Filing No. 50055</b>

**Agency Information**

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Fleet Operations	
<b>Street address:</b>	4315 S 2700 W 3rd Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Stewart Cowley		scowley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R27-7. Safety and Loss Prevention of State Vehicles
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations to make rules establishing requirements for fleet safety and loss prevention programs.
<b>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:</b>

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:**

This rule is required pursuant to Section 63A-9-401. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Stewart Cowley, Director	<b>Date:</b>	10/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R151-14</b>	<b>Filing No. 50228</b>

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Bldg	
<b>Street address:</b>	160 E 300 S, Second Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	Box 146701	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6701	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Masuda Medcalf	801-530-7663	mmedcalf@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R151-14. New Automobile Franchise Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
The New Automobile Franchise Act (NAFA), Section 13-14-101 governs the distribution and sales of new motor vehicles through franchise agreements and regulates the relationship between franchisors and franchisees. Section 13-14-104 authorizes the Utah Motor Vehicle Franchise Advisory Board and the Department of Commerce to promulgate rules regarding the administration of NAFA.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No comments have been received regarding this rule in the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The rule is necessary to administer the registration of franchisees and franchisors and to conduct adjudicative proceedings before the Board. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Chris Parker, Executive Director	<b>Date:</b>	10/21/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R156-61a</b>	<b>Filing No. 50293</b>

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M Wells Bldg	
<b>Street address:</b>	160 E 300 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jennifer Zaelit-Falkenrath	801-530-7632	jzaelit@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R156-61a. Behavior Analyst Licensing Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Title 58, Chapter 61, Part 7, provides for the licensure and regulation of behavior analysts and assistant behavior specialists. Subsection 58-1-106(1)(a) provides that the

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Psychologist Licensing Board's duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 61, Part 7, with respect to behavior analysts and assistant behavior specialists.

**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:**

Since this rule was originally enacted in November 2015, the Division has received no written comments with respect to the 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 should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 61, Part 7. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	06/18/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R356-2</b>	<b>Filing No.</b>	<b>50850</b>
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**Agency Information**

<b>1. Department:</b>	Governor
<b>Agency:</b>	Criminal and Juvenile Justice (State Commission on)
<b>Room no.:</b>	330
<b>Building:</b>	Senate
<b>Street address:</b>	Utah State Capitol Complex PO Box 14230
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2330
<b>Contact person(s):</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Cordova	801-425-7346	kimcordova@utah.gov

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

**General Information**

**2. Rule catchline:**

R356-2. Judicial Nominating Commissions

**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 the authority of Section 78A-10-1, this rule provides procedures for nominating and the appointment of judges.

**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:**

Utah has a merit based process for its selection of judges. It is one of the best models in the country and as a result, the judiciary in Utah is extraordinary. The process also builds trust with the community and faith by the community in the judiciary. The Commission agrees that there needs to be amendments to this rule to reflect the current process. The amendment will be filed concurrently with this review. Therefore, this rule should be continued. (EDITOR'S NOTE: The proposed amendment to Rule R356-2 is under Filing No. 53141 in this issue, November 15, 2020, of the Bulletin.)

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kim Cordova, Executive Director	<b>Date:</b>	10/21/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R434-50</b>	<b>Filing No.</b>	<b>51098</b>
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**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Family Health and Preparedness, Primary Care and Rural Health

<b>Room no.:</b>	361	
<b>Street address:</b>	3760 S Highland Drive	
<b>City, state, zip:</b>	Salt Lake City, UT 84106	
<b>Mailing address:</b>	PO Box 142005	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2005	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ashley Moretz	801-350-1546	amoretz@utah.gov
Colton Gordon	801-230-6570	coltongordon@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R434-50. Assistance for People with Bleeding Disorders
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is required by Subsection 26-47-103(5). It implements Section 103 of the Health Care Assistance Act, Title 26, Chapter 47. In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Health shall make rules governing the administration of the program, which is Rule R434-50.
<b>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:</b>
No written comments have been received since the last five-year review of the rule from interested persons supporting or opposing the rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule should be continued because it has met the requirements of its authorizing statute and this rule has facilitated a well-administered program that meets the statutory purposes of Section 26-47-103.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard Saunders, Interim Executive Director	<b>Date:</b>	10/22/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R527-35</b>	<b>Filing No. 51274</b>

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R527-35. Non-IV-A Fee Schedule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law pursuant to Title 62A, Chapter 11. Provisions found in Section 62A-11-104 require the ORS to collect money due the agency which may help offset state expenditure. 45 CFR 302.33 states that ORS must provide that an application fee will be charged for each individual who applies for services, that ORS shall collect the application fee from the individual or pay the application fee out of state funds, and that ORS may elect to recover any costs incurred in excess of any fees collected to cover administrative costs. This rule provides the schedule of fees that ORS may charge recipient of child support services who are not receiving financial assistance or Medicaid.
<b>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:</b>
There have been no comments 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:**

This rule should be continued because the fees outlined in this rule that are charged for the Non-IV-A services provided by ORS are still in effect. In addition, this rule incorporates 45 CFR 302.33 by reference, which is still in effect, and addresses the costs that a state may elect to recover for providing Non-IV-A services. The fees listed in this rule are not specified in the federal regulations or in the authorizing state statute.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Liesa Stockdale, Director	<b>Date:</b>	10/13/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R655-10</b>	<b>Filing No. 51720</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Water Rights	
<b>Room no.:</b>	220	
<b>Street address:</b>	1594 W North Temple	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	1594 W North Temple	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marianne Burbidge	801-538-7370	Marianneburbidge@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R655-10. Dam Safety Classifications, Approval Procedures and Independent Reviews
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance. The purpose of this rule is to outline the procedures necessary

to obtain approval to design, construct, operate, and remove a dam. This rule in no way waives the right of the State Engineer to evaluate the merits of different procedures or to require additional information before approval of any project. This rule applies to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102. Some dams may have an abbreviated approval process as outlined in Section 73-5a-202.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No comments have been received in the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Rule R655-10 is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Teresa Wilhelmsen, PE, State Engineer/ Director	<b>Date:</b>	10/28/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R655-11</b>	<b>Filing No. 51721</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Water Rights	
<b>Room no.:</b>	220	
<b>Street address:</b>	1594 W North Temple	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	1594 W North Temple	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marianne Burbidge	801-538-7370	Marianneburbidge@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R655-11. Requirements for the Design, Construction and Abandonment of Dams
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum design requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance. This rule applies to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102 and those dams not requiring plans as outlined in Section 73-5a-202.
<b>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:</b>
No comments have been received in the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Rule R655-11 is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Teresa Wilhelmsen, PE, State Engineer/ Director	<b>Date:</b>	10/28/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R655-12</b>	<b>Filing No. 51724</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Water Rights
<b>Room no.:</b>	220
<b>Street address:</b>	1594 W North Temple
<b>City, state, zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	1594 W North Temple
<b>City, state, zip:</b>	Salt Lake City, UT 84116
<b>Contact person(s):</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marianne Burbidge	801-538-7370	Marianneburbidge@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R655-12. Requirements for Operational Dams
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum operational requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance. This rule applies to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102, and those dams not requiring plans as outlined in Section 73-5a-202.
<b>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:</b>
No comments have been received in the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Rule R655-12 is still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Teresa Wilhelmsen, PE, State Engineer/ Director	<b>Date:</b>	10/28/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R722-910</b>	<b>Filing No. 51938</b>
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**Agency Information**

<b>1. Department:</b>	Public Safety
<b>Agency:</b>	Criminal Investigations and Technical Services, Criminal Identification
<b>Street address:</b>	3888 W 5400 S
<b>City, state, zip:</b>	Taylorsville, UT 84129

Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Greg Willmore	801-965-4533	gwillmor@utah.gov
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Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule catchline:</b> R722-910. Non-Reportable Traffic Offenses
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b> Subsection 53-10-104(13) authorizes the Department of Public Safety to promulgate rules to implement the provisions of Title 53, Chapter 10. This rule establishes procedures regarding the collection and dissemination of non-reportable traffic offenses.
<b>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:</b> There have been no written comments received during and since the last five-year review of this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b> This rule is authorized under Subsection 53-10-104(13) and is necessary in order to outline procedures regarding the collection and dissemination of non-reportable traffic offenses. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jess L. Anderson, Commissioner	<b>Date:</b>	10/27/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R909-3</b>	<b>Filing No. 52100</b>

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Motor Carrier	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state, zip:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	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	ledwards@agutah.gov

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

**General Information**

<b>2. Rule catchline:</b> R909-3. Standards for Utah School Buses
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b> This rule is enacted under authority of Sections 41-6a-1304 and 41-6a-1309 for the purpose of governing the design and operation of school buses and governing the placement of advertisements on school buses. Section 41-6a-1304 requires the Department of Transportation (Department) to maintain this rule.
<b>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:</b> The Department has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b> Section 41-6a-1304, which is effective law, requires the Department to maintain this rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	10/28/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R940-6</b>	<b>Filing No. 52162</b>

**Agency Information**

<b>1. Department:</b>	Transportation Commission	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state, zip:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R940-6. Prioritization of New Transportation Capacity Projects
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

Subsection 72-1-304(5) requires the Transportation Commission (Commission) to consult with the Department of Transportation (Department) and the metropolitan planning organizations to make rules establishing the written prioritization process pursuant to Subsection 72-1-304(1). As required by Subsection 72-1-304(5), the Department and the Commission have consulted and established the written prioritization process. This rule codifies that written prioritization process as required by Subsection 72-1-304(5).

**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:**

Acting on behalf of the Commission, the Department has received numerous written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule. The written comments are from representatives of local governments, other state agencies, and quasi-state agencies that are affected by the way the Commission prioritizes projects. The Commission made changes to this rule in October 2019, and it is filing proposed changes to this rule the same day it files this five-year review. The written comments represent the collaboration that the Department and Commission work to engage in with affected persons and entities. Since a collaboration takes place, the comments received both support and oppose this rule because it is all part of the process. The changes the Commission makes to the rule are largely a result of the collaboration between the stakeholders. (EDITOR'S NOTE: The proposed amendment to Rule R940-6 is under Filing No. 53160 in this issue, November 15, 2020, of the Bulletin.)

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule must be continued because it satisfies the requirements of Subsection 72-1-304(5), which remains in effect.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	10/30/2020
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**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Administrative Services

#### Records Committee

No. 52790 (Amendment and CPR) R35-2-2: Scheduling and Declining Requests for Hearings

Published: 09/15/2020

Effective: 10/16/2020

#### Records Management Committee

No. 52975 (New Rule) R36-1: Records Management Committee

Published: 08/15/2020

Effective: 10/16/2020

### Alcoholic Beverage Control

#### Administration

No. 53013 (Amendment) R82-1: General

Published: 09/15/2020

Effective: 10/27/2020

No. 53014 (Amendment) R82-1-208: Percentage lease agreements

Published: 09/15/2020

Effective: 10/27/2020

No. 53015 (Amendment) R82-1-304: Background Checks for Resort Licenses

Published: 09/15/2020

Effective: 10/27/2020

No. 53016 (Amendment) R82-2-303: Non-Consignment Inventory

Published: 09/15/2020

Effective: 10/27/2020

No. 53017 (Amendment) R82-5-101: General Retail License Provisions

Published: 09/15/2020

Effective: 10/27/2020

No. 53018 (Amendment) R82-5-102: Licensing Ownership, and Transfer of License

Published: 09/15/2020

Effective: 10/27/2020

No. 53019 (Amendment) R82-5-104: Liquor Dispensing Systems

Published: 09/15/2020

Effective: 10/27/2020

No. 53020 (Amendment) R82-5-107: Identification

Published: 09/15/2020

Effective: 10/27/2020

No. 53021 (Amendment) R82-6-602: Reporting Requirement for Banquet Licensees

Published: 09/15/2020

Effective: 10/27/2020

No. 53022 (Amendment) R82-6-1005: Hospitality Amenity Licensee Notice and Records

Published: 09/15/2020

Effective: 10/27/2020

No. 53023 (Amendment) R82-7-102: Off-Premise Beer Retailer State License & Master Off-Premise Beer Retailer License

Published: 09/15/2020

Effective: 10/27/2020

### Commerce

#### Consumer Protection

No. 53044 (Amendment) R152-49: Immigration Consultants Registration Act Rule

Published: 09/15/2020

Effective: 10/26/2020

## NOTICES OF RULE EFFECTIVE DATES

Occupational and Professional Licensing  
No. 53070 (Amendment) R156-17b: Pharmacy Practice Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53041 (Amendment) R156-28: Veterinary Practice Act Rule  
Published: 09/15/2020  
Effective: 10/23/2020

No. 53064 (Amendment) R156-60: Mental Health Professional Practice Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53065 (Amendment) R156-60a: Social Worker Licensing Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53071 (Amendment) R156-60b: Marriage and Family Therapist Licensing Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53066 (Amendment) R156-60c: Clinical Mental Health Counselor Licensing Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53067 (Amendment) R156-60d: Substance Use Disorder Counselor Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

Real Estate  
No. 52504 (Amendment) R162-2f: Real Estate Licensing and Practices Rules  
Published: 09/01/2020  
Effective: 10/21/2020

### Education

#### Administration

No. 53026 (New Rule) R277-319: Special Educator Stipends  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53024 (Amendment) R277-406: Early Learning Program and Benchmark Assessments  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53027 (Amendment) R277-492: Utah Science Technology and Research Initiative (USTAR) Centers Program  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53028 (Repeal) R277-525: Special Educator Stipends  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53031 (Amendment) R277-552: Charter School Timelines and Approval Processes  
Published: 09/15/2020  
Effective: 10/23/2020

No. 53029 (Amendment) R277-750: Education Programs for Students with Disabilities  
Published: 09/01/2020  
Effective: 11/06/2020

No. 53030 (Amendment) R277-925: Effective Teachers in High Poverty Schools Incentive Program  
Published: 09/01/2020  
Effective: 11/09/2020

### Environmental Quality

#### Air Quality

No. 53004 (New Rule) R307-240: Prescribed Burning  
Published: 09/01/2020  
Effective: 11/05/2020

#### Water Quality

No. 53042 (Amendment) R317-1: TMDLs  
Published: 09/15/2020  
Effective: 10/30/2020

### Health

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

No. 53073 (Amendment) R414-307: Eligibility for Home and Community-Based Services Waivers  
Published: 10/01/2020  
Effective: 11/10/2020

### Human Services

#### Services for People with Disabilities

No. 53069 (Repeal and Reenact) R539-1: Eligibility  
Published: 10/01/2020  
Effective: 11/09/2020

### Labor Commission

#### Adjudication

No. 53008 (Amendment) R602-2: Pleadings and Discovery  
Published: 09/01/2020  
Effective: 10/22/2020

### Occupational Safety and Health

No. 53033 (Amendment) R614-1: Incorporation of Federal Standards  
Published: 09/15/2020  
Effective: 10/23/2020

Natural Resources

Oil, Gas and Mining; Non-Coal

No. 53045 (Amendment) R647-1: Definitions

Published: 09/15/2020

Effective: 10/29/2020

No. 53046 (Amendment) R647-3: Mine Enlargement

Published: 09/15/2020

Effective: 10/29/2020

No. 53047 (Amendment) R647-4: Revisions

Published: 09/15/2020

Effective: 10/29/2020

Wildlife Resources

No. 53058 (Amendment) R657-10: Taking Cougar

Published: 10/01/2020

Effective: 11/09/2020

Tax Commission

Property Tax

No. 53011 (Amendment) R884-24P-33: 2020 Personal  
Property Valuation Guides and Schedules Pursuant to Utah  
Code Ann. Section 59-2-107

Published: 09/01/2020

Effective: 10/20/2020

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

