

# UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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## 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 January 16, 2021, 12:00 a.m., and February 01, 2021, 11:59 p.m. are included in this, the February 15, 2021, 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 March 17, 2021. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 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: Amendment		
Utah Admin. Code Ref (R no.):	R21-1	Filing No. 53310

**Agency Information**

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Debt Collection	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 Wt, Floor 3	
<b>City, state:</b>	Taylorsville, UT 84129-3742	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Cory Weeks	801-957-7713	cweeks@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R21-1. Transfer of Collection Responsibility of State Agencies
<b>3. Purpose of the new rule or reason for the change:</b>
Section R21-1-10 is added on recommendation from the Office of the Legislative Auditor General. Wording referring to Section R21-1-10 is added at Section R21-1-7.
<b>4. Summary of the new rule or change:</b>
The amendments allow the Office of State Debt Collection (OSDC) to create policies delaying payment of fees and penalties until 90 days after an incarcerated person is released from prison.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The OSDC Special Revenue Fund anticipates reduced revenue for collection fees but cannot estimate how the change will impact the office. The office does not, however, anticipate that the change will result in a budget shortfall.
<b>B) Local governments:</b>
The added language will not result in any additional costs to the local governments. None of the added language to this rule will impact local governments.

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

Because the new language deals with collection of fees from incarcerated offenders, there will be no costs to small businesses.

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

Because the new language deals with collection of fees from incarcerated offenders, there will be no costs 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**):

Debtors affected by this change will realize a benefit commensurate to the revenue reduction realized by OSDC.

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

There are not 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>

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

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

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

I have reviewed the new language in Rule R21-1 with the Division of Finance Director and believe that these changes are reasonable and warranted. There will be no fiscal impact on businesses.

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

Jenney Rees, 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 63A-3-502(3)(m)	Subsection 63A-3-502(4)(g)	Subsection 63A-3-502(6)(a)
Subsection 63A-3-502(6)(b)	Subsection 63A-3-502(7)(f)	Section 15-1-4

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. 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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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>	Janica Gines, Interim Director	<b>Date:</b>	02/01/2021
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**R21. Administrative Services, Debt Collection.**

**R21-1. Transfer of Collection Responsibility of State Agencies.**

**R21-1-1. Purpose.**

The purpose of this rule is to establish the procedures by which agencies shall:

(1) bill and make initial collection efforts according to a coordinated schedule[?];

(2) [the method to be used by agencies to] transfer their delinquent accounts receivable to OSDC[the Office] or its designee for additional collection action[?];

(3) write-off of receivables[?]; and

(4) [the procedures and allocation of] allocate the costs of collection established pursuant to Subsections 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4[Utah Code,] and [by the Legislature in ]other applicable laws.

**R21-1-2. Authority.**

This rule is established pursuant to Section 63A-3-504[Subsections 63A-3-502(3)(m), 63A-3-502(7)(f), 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4, and fees authorized by the Legislature in applicable laws. Subsection 63A-3-502(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-3-502(7)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-3-502(7)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-3-502(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63J-1-504. Subsection 63A-3-502(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-3-502(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate plus 2% and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and allows the costs of collection to be collected from the debtor].

**R21-1-3. Definitions.**

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

(1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

(2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.

(3) "FINET" means the statewide accounting system centrally administered by the Division of Finance.

~~(3)~~(4) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

(4)(5) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.

~~(5)~~(6) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.

(7) "OSDC" means the Office of State Debt Collection.

~~(6)~~(8) "Trust" means a receivable that is owed to a victim of a crime.

**R21-1-4. Agency Billing and Collection Responsibility.**

(1) ~~Pursuant to Subsection 63A-3-502(3)(b), (d), and (f) as provided by Subsection 63G-3-201, state agencies~~ Agencies shall document and track agency receivables on ~~the State's central accounting system (FINET).~~ FINET.

(a) ~~unless the state agency has received an exemption from the~~ An agency may apply to the Division of Finance and ~~Office of State Debt Collection~~ OSDC for an exemption to this subsection.

(b) ~~If a state agency receives such an exemption, the state agency~~ An agency exempted under this section shall:

(i) track ~~their~~ receivables on the agency system; ~~and~~

(ii) provide the ~~Office~~ OSDC with quarterly receivable reports pursuant to 63A-3-502(7)(g) ~~;~~ and

(ii) ~~The~~ provide receivable reports ~~are due~~ to ~~Office~~ OSDC no later than 45 days after the end of the quarter.

(2) ~~State agency customers~~ Customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring.

(3) The payment demand date shall be no later than 30 days from the event date unless the ~~state~~ agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes.

(4) ~~State agencies~~ Agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

(5) ~~The Office has published guidelines for billing receivables and collecting delinquent accounts. These guidelines include this rule and~~ Agencies shall review and comply with the statewide accounting FIACCCT 06 policies available on the Division of Finance website, finance.utah.gov.

**R21-1-5. Transfer of Collection Responsibility.**

(1) Each ~~state~~ agency with delinquent accounts shall comply with the provisions of ~~Section~~ Subsection 63A-3-502(7) ~~et seq.~~ unless prohibited by current state or federal statute or regulation.

(2) ~~A state~~ An agency or user of ~~the Office of State Debt Collection~~ services shall transfer collection responsibility to ~~OSDC~~ the Office, or its designee, when the account receivable is not paid within 90 days of the initial billing or is delinquent 61 days.

(3) ~~A state~~ An agency ~~can~~ may negotiate a different receivable transfer date with ~~the Office~~ OSDC by demonstrating how the state benefits from the negotiated transfer date.

**R21-1-6. Format for Transfer of Accounts Receivable Data.**

(1) ~~(a) State agencies~~ Agencies shall transfer delinquent accounts to ~~the Office~~ OSDC or its designee electronically through FINET.

(2) ~~State agencies~~ Agencies exempted from using FINET for individual receivables shall work with ~~the Office~~ OSDC to generate an electronic placement file for ~~placing~~ transferring delinquent accounts.

~~(2)(b)~~ Debts owed by business entities must be transferred by ~~State~~ agencies with:

(a) ~~(4)~~ a list of positively identified liable parties; ~~and~~;

(b) ~~(2)~~ a Federal tax identification ~~number~~ numbers for each liable party.

**R21-1-7. Costs of Collection.**

~~Pursuant to Subsections 63A-3-502(4) (g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority for accounts receivable collected by OSDC shall be applied according to the following methodology.~~

(1)(a) Except as specified in Section R21-1-10, pursuant ~~Pursuant~~ to Subsection 63A-3-502(4)(g)(i) ~~;~~;

(a) the costs of collection shall be charged on all accounts referred for collection; ~~and~~

(b) the cost shall be calculated based on the dollars collected times the rate authorized by the legislature ~~;~~ and

(c) ~~the~~ The cost of collection shall be paid first from each payment.

(2)(b) The Penalty shall be calculated as a percent of the receivable balance referred for collection.

(a) Two percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full.

(b) The penalty payment shall be calculated up to the authorized penalty percent set annually by the legislature, times the received payment amount.

(c) The calculated penalty amount shall be paid after the costs of collection are determined and paid.

(3)(e) Two types of interest shall be charged on accounts referred to ~~OSDC~~ the Office.

(a) Postjudgment interest as established by Section 15-1-4 ~~;~~ Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999.

(i) Postjudgment interest accrues on the unpaid judgment balance of the receivable.

(ii) Postjudgment interest that accrues on a trust, or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable.

(b) ~~All other state~~ Other receivables referred to ~~OSDC~~ the Office are charged an interest ~~rate~~ charge pursuant to Subsection 63A-3-502 (4) (g)(iii)(B), ~~Utah Code. This interest is~~ referred to as OSDC interest.

(i) OSDC accrued interest shall be paid from each payment up to 5% of the payment after the payment of the costs of collection and 2% penalty.

(ii) OSDC accrued interest shall be paid pursuant to Subsection R21-1-7(4) ~~except~~ on trust receivables or receivables including a trust account.

(4)(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully disbursed:

(a) First, ~~1st~~ cost of collection ~~;~~;

(b) Second, ~~2nd~~ 2% penalty ~~;~~;

(c) Third, ~~3rd~~ the trust receivable balance up to the total amount of the receivable ~~;~~ and

(d) Fourth, ~~4th~~ the accrued postjudgment interest.

(5)(e) Each payment received on receivables that include trust ~~(e)~~ and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed:



- ~~(a) First, [1st]~~ cost of collection~~;~~
- ~~(b) Second, [2nd]~~ 2% ~~[-]~~ penalty payment~~;~~
- ~~(c) Third, [3rd]~~ the trust(s) receivable balance until paid in full~~;~~
- ~~(d) Fourth, [4th]~~ accrued post-judgment or OSDC interest on the state receivable balance~~;~~
- ~~(e) Fifth, [5th]~~ the state receivable balance~~;~~ and
- ~~(f) Sixth, [6th]~~ the accrued trust post-judgment interest.

~~(6)(f)~~ Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed:

- ~~(a) First, [1st]~~ cost of collection~~;~~
- ~~(b) Second, [2nd]~~ 2% ~~[-]~~ penalty payment~~;~~
- ~~(c) Third, [3rd]~~ 5% accrued post-judgment or OSDC interest~~;~~ and
- ~~(d) Fourth, [4th]~~ the receivable balance.

~~(7)(a)(e)~~ Trust Payments sent to victims of crimes that are returned to ~~the Office~~ OSDC because of bad addresses, shall be retained by ~~the Office~~ OSDC, until the victim is located or statute requires transfer to another ~~State~~ agency.

~~(b) [Regardless, payments]~~ Payments shall continue to be applied to the trust balance~~(e)~~ until liquidated, and there after applied to other applicable debts~~[State debt]~~.

**R21-1-8. Write Off of Accounts Receivable.**

~~[State agencies]~~ Agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance at [finance.utah.gov](http://finance.utah.gov).

**R21-1-9. Original Signature Required on Certain ~~Office of State Debt Collection~~ (OSDC) Documents.**

An ~~[O]~~ original ~~[S]~~ signature is ~~[R]~~ required by ~~the Office of State Debt Collection~~ (OSDC) on the following documents:

- (1) Victim Settlement Agreement;
- (2) ~~[OSDC]~~ Debt Repayment Contract Agreement;
- (3) Wage Assignments to pay debts;
- (4) Authority for the automatic transfer of funds (EFT) to pay debts; and
- (5) Authority for the automatic Credit/Debit Card charge to pay debts.

**R21-1-10. Delay and Remission of Fees and Penalties.**

(1) OSDC shall create policies for the purpose of remitting fees and penalties to incentivize payment of debts.

(2) When OSDC receives a criminal account receivable for an offender who is incarcerated for the same criminal offense, OSDC may not apply fees or penalties for the receivable until 90 days after the debtor is released from prison.

**KEY: accounts receivable, collection transfer**  
**Date of Enactment or Last Substantive Amendment: 2021 August 7, 2019**  
**Notice of Continuation: June 7, 2017**  
**Authorizing, and Implemented or Interpreted Law: 63A-3-502(3)(m); 63A-3-502(4)(g); 63A-3-502(6)(a); 63A-3-502(6)(b); 63A-3-502(7)(f); 15-1-4**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R52-7	Filing No. 53286

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Horse Racing Commission (Utah)	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambrown@utah.gov
Dean Taylor	801-982-2243	dtaylor@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R52-7. Horse Racing
<b>3. Purpose of the new rule or reason for the change:</b>
The Department of Agriculture and Food (Department) needs to update this rule to include a recently released version of the Controlled Therapeutic Medication Schedule for Horses and decrease the amount of time a horse must be present prior to a race based on feedback from the industry. The Department would also like to take the opportunity to make nonsubstantive changes what will make the rule text more consistent with the requirements of the Utah Rulewriting Manual.
<b>4. Summary of the new rule or change:</b>
In Section R52-7-8, the requirement for a horse to be present prior to a race is changed from five hours to four hours.
In Subsection R52-7-13(3), a change is made to clarify the conditions under which some items on the list of Prohibited Substances may be used. An updated version of the Controlled Therapeutic Medication Schedule for Horses is incorporated.

Additionally, throughout this rule text, nonsubstantive changes have been made to make this rule more consistent with the Utah Rulewriting Manual, as well as more internally consistent in terms of numbering, capitalization, grammar, and list and sentence structure.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The changes are just clarifying this rule and do not change the costs to the Horse Racing Commission or businesses as related to horse racing in Utah.

**B) Local governments:**

Local governments are not affected by this rule changes because they do not administer or participate in the horse racing program.

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

The changes do not affect the cost of small businesses participating in horse racing in Utah because they just add clarity to this rule.

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

The changes do not affect the cost of non-small businesses participating in horse racing in Utah because they just add clarity to this 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**):

Other persons are not affected by the rule changes because they just clarify this rule with regard to prohibited substances and exemptions.

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

The compliance costs for affected persons have not changed. Fees charged by the Horse Racing Commission will remain the same.

**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 Acting Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approves the fiscal impact analysis.

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

The rule changes will not have a fiscal impact on businesses in the .

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

Craig W. Buttars, Acting 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 4-38-104

**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>	Controlled Therapeutic Medication Schedule for Horses
<b>Publisher</b>	Utah Horse Racing Commission
<b>Date Issued</b>	December 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>	03/17/2021
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<b>10. This rule change MAY become effective on:</b>	03/24/2021
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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>	Craig W. Buttars, Acting Commissioner	<b>Date:</b>	01/15/2021
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**R52. Agriculture and Food, Horse Racing Commission (Utah).**

**R52-7. Horse Racing.**

**R52-7-1. Authority.**

Promulgated under authority of Section 4-38-104.

**R52-7-2. Definitions.**

The following definitions shall apply in these rules unless otherwise indicated.

1. "Act" means the Utah Horse Regulation Act.
2. "Added money" means all monies added to the fees paid by the horsemen into the purse for a race.
3. "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.
4. "Also Eligible" pertains to[-]; \_\_\_\_\_(A) a number of eligible horses, properly entered, [which]that were not drawn for inclusion in a race, but [which]that become eligible according to preference or lot if an entry is scratched prior to scratch time deadline; or

\_\_\_\_\_([B]) the next preferred nonqualifier for the finals or consolation from a set of elimination trials [which]that will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

5. "Arrears" means money past due for entrance fees, jockey fees, or nomination or supplemental fees in nomination races, and therefore in default incidental to these Rules or the conditions of a race.

6. "Authorized Agent" means a person appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the Agent will act. [Said]The instrument [must]shall be on file with the Commission and its authorized representatives.

7. "Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

8. "Breeder" of a horse is the owner or lessee of its dam at the time of breeding.

9. "Closing" means the time published by the organization after which nominations or entries will not be accepted for a race.

10. "Commission" means the Utah Horse Racing Commission.

11. "Commissioner" means a member of the Commission.

12. "Conditions of a race" are the qualifications [which]that determine a horse's eligibility to enter.

13. "Day" is a period of 24 hours beginning at midnight.

14. "Race day" is a day during which horse races are conducted.

15. "Declaration" means the act of withdrawing an entered horse from a race before the closing of overnight entries.

16. "Drug [or Medication]" means a substance foreign to the normal physiology of the horse.

17. "Enclosure" means [all]-areas of the property of an organization licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and [all]-parking areas designed to serve the facility [which]-are owned or leased by the organization licensee.

18. "Entry" means a horse made eligible to run in a race.

19. "Family" means a husband, wife, and any dependent children.

20. "Field" means [all]-horses competing in a race.

21. "Financial Interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.

22. "Foreign Substances" are [all]any substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include [but not be limited to all]narcotics, stimulants, or depressants.

23. "Foul" means an action by any horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

24. "Horse" means an equine of any breed and includes a stallion, gelding, mare, colt, filly, spayed mare or ridgeling.

25. "Horse Racing" means any type of horse racing, including Arabian, Appaloosa, Paint, Pinto, Quarter Horse, and Thoroughbred horse racing.

26. Horse Racing Types:

A. "Appaloosa Horse Racing" means the form of horse racing in which each participating horse is an Appaloosa horse registered with

## NOTICES OF PROPOSED RULES

the Appaloosa Horse Club or any successor organization and mounted by a jockey.

B. "Arabian Horse Racing" means the form of horse racing in which each participating horse is an Arabian horse registered with the Arabian Horse Club Registry of America and approved by the Arabian Horse Racing Association of America or any successor organization, mounted by a jockey, and engaged in races on the flat over a distance of not less than one-quarter mile or more than four miles.

C. "Paint Horse Racing" means the form of horse racing in which each participating horse is a Paint horse registered with the American Paint Horse Association or any successor organization and mounted by a jockey.

D. "Pinto Horse Racing" means the form of horse racing in which each participating horse is a Pinto horse registered with the Pinto Horse Association of America, Inc., or any successor organization and mounted by a jockey.

E. "Quarter Horse Racing" means the form of horse racing ~~[where]~~in which each participating horse is a Quarter Horse registered with the American Quarter Horse Association or any successor organization, mounted by a jockey, and engaged in a race over a distance of less than one-half mile.

F. "Thoroughbred Horse Racing" means the form of horse racing in which each participating horse is a Thoroughbred horse registered with the Jockey Club or any successor organization, mounted by a Jockey, and engaged in races on the flat.

27. "Inquiry" means the stewards immediate investigation into the running of a race which may result in the disqualification of one or more horses.

28. "Jockey" means the rider licensed to race.

29. "Jockey Agent" means a licensed authorized representative of a jockey.

30. "Lessee" means a licensed owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the registration certificate and on file with the Commission.

31. "Lessor" means the owner of the horse that is leased.

32. "Maiden" means a horse that has never won a race recognized by the official race records of the particular horse's breed registry. A maiden which has been disqualified after finishing first is still a maiden.

33. "Minor" means any individual under 18 years of age.

34. "Nominator" means the person who nominated the horse as a possible contender in a race.

35. "Objection" means:

A. ~~[A]~~a written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered; or

B. ~~[A]~~a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owners licensed Authorized Agent before the race is declared official.

36. "Occupation License" means a requirement for any person acting in any capacity within the enclosure during the race meeting.

37. "Occupation Licensee" means a person who has obtained an occupation license.

38. "Utah Bred Horse" means a horse that is sired by a stallion standing in Utah.

39. "Organization License" means a requirement of any person desiring to conduct a race meeting within the state of Utah.

40. "Organization Licensee" means any person receiving an organization license.

41. "Owner" means any person who holds, in whole or in part, any rights, title, or interest in a horse, or any lessee of a horse who has been duly issued a currently valid owner's license as a person responsible for such horse.

42. "Person" means any individual, corporation, partnership, syndicate, another association or entity.

43. "Post Position" means the position in the starting gate assigned to the horse for the race.

44. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

45. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R52-7-10(8).

46. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

47. "Allowance" means a race in which eligibility ~~[and]~~or the weight to be carried are based upon the horse's past performance over a specified time.

48. "Handicap" means a race in which the weights to be carried by the entered horses are assigned according to the Racing Secretary's evaluation of each horse's potential for the purpose of equalizing their respective chances of winning.

49. "Invitational" means a race in which the competing horses are selected by inviting their owners to enter specific horses.

50. "Match" means a race contest between two horses with prior consent by the Commission under conditions agreed to by the owners.

51. "Nomination" means a race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations ~~[must]~~shall close at least 72 hours before the first post time of the day the race is originally scheduled to be run.

52. "Progeny" means a race restricted to the offspring of a specific stallion or stallions.

53. "Purse Race (Overnight)" means any race in which entries close less than 72 hours prior to its running.

54. "Schooling Race" means a preparatory race for entry qualification in official races ~~[which]~~that conform to requirements adopted by the Commission.

55. "Stakes" means a race which is eligible for stakes or "black-type" recognition by the particular breed registry.

56. "Trials" means a set of races in which eligible horses compete to determine the finalists for a purse in a nominated race.

57. "Restricted Area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include ~~[but not be limited to,]~~ the barn area, paddock, test barn, Stewards Tower, race course, or any other area designated restricted by the organization licensee ~~[and]~~or the Commission. Signs giving notice of restricted access shall be prominently displayed at ~~[all]~~each entry point[s].

58. "Rules" means the rules herein prescribed and any amendments or additions.

59. "Scratch" means the act of withdrawing an entered horse from a race after the closing of overnight entries.

60. "Scratch Time" means the deadline set by the organization licensee for the withdrawing of entered horses.

61. "Starter" means the horse whose stall door of the starting gate opens in front of such horse at the time the starter ~~[(the Official)]~~ dispatches the horses.

62. "Subscription" means the act of nominating a horse to a nomination race.

63. "Week" means a period of seven days beginning at 12:01 a.m., Monday during which races are conducted.

### **R52-7-3. Commission Powers and Jurisdiction.**

1. Description and Powers. The Utah Horse Racing Commission is an administrative body created by Section 4-38-103. The Commission consists of five members ~~which~~ that are appointed by the governor, and whose powers and duties are prescribed by the legislature. The Commission appoints an executive director who is the administrative head of the agency, and the Commission determines the duties of the executive director. The Commission shall have supervision of ~~all~~ any sanctioned race meetings held in the State of Utah, ~~and~~ ~~all~~ any occupation and organization licensees in the State, and ~~all~~ any persons on the property of an organization licensee.

2. Jurisdiction. Without limitations by specific mention hereof, the stated purposes of the Rules and Regulations hereby promulgated are ~~as follows~~:

A. ~~F~~to encourage agriculture and breeding of horses in this State; ~~and~~

B. ~~F~~to maintain race meetings held in the State of the highest quality and free of any horse racing practices ~~which~~ that are corrupt, incompetent, dishonest or unprincipled; ~~and~~

C. ~~F~~to maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and

D. ~~F~~to generate public revenues.

E. Commission jurisdiction of a race meet commences one hour prior to post time and ends one hour following the last posted race.

3. Controlling Authority. The law, the rules, and the orders of the Commission supersede the conditions of a race meeting and govern Thoroughbred, Quarter Horse, Appaloosa, Arabian, Paint and Pinto racing, except in the event ~~if~~ they can have no application to a specific type of racing. In the latter case, the Stewards may enforce rules or conditions of The Jockey Club for Thoroughbred racing, the American Quarter Horse Association for Quarter Horse racing; the Appaloosa Horse Club for Appaloosa racing; the Arabian Horse Racing Association of America for Arabian racing; the American Paint Horse Association for Paint racing; and the Pinto Horse Association of America, Inc., for Pinto racing; if such rules or conditions are not inconsistent with the Laws of the State of Utah and the Rules of the Commission.

4. Commission Meetings. The following provisions govern any meeting at which a voting majority of ~~e~~ Commission members appear at the anchor location, by telephone, or electronically pursuant to Utah Code Section 52-4-207:

~~(a)~~ A. If enough ~~e~~ Commission members ~~which~~ to constitute a voting majority intend to participate electronically or by telephone, public notices of the meeting shall be posted. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

~~(b)~~ B. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be posted on the Public Notice Website. These notices shall be provided at least 24 hours before the meetings.

~~(c)~~ C. Notice of the possibility of an electronic meeting shall be given to the ~~e~~ Commission members at least 24 hours before the meeting. In addition, the notice shall describe how a ~~e~~ Commission member may participate in the meeting electronically or by telephone.

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

~~(e)~~ E. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food, 350 N Redwood Road, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

5. Punishment ~~B~~ by The Commission. Violation of the ~~A~~ act and rules promulgated by the Commission, whether or not a penalty is fixed therein, is punishable in the discretion of the Commission by denial, revocation or suspension of any license; by fine; by exclusion from ~~all~~ racing enclosures under the jurisdiction of the Commission; or by any combination of these penalties. Fines imposed by the Commission shall not exceed \$10,000 against individuals for each violation ~~of~~ any ~~R~~ rules ~~or regulations~~ promulgated by the Commission, ~~or~~ any Order of the Commission ~~or~~ for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing, according to Subsection 4-38-~~9(2)~~ 301(4).

6. Extension ~~F~~ for Compliance. If a licensee fails to perform an act or obtain required action from the Commission within the time prescribed therefore by these ~~R~~ rules, the Commission, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

7. Notice ~~F~~ to Licensee. Whenever notice is required to be given by the Commission or the Stewards, ~~such~~ the notice shall be given in writing by personal delivery to the person to be notified or by mailing, Certified Mail, Return Receipt Requested, ~~such notice~~ to the last known address furnished to the Commission; or may be given as is provided for service of process in a civil proceeding in the State of Utah and pursuant to ~~the~~ Title 63G, Chapter 4, Administrative Procedures Act.

8. Location ~~F~~ for Information ~~O~~ or Filing ~~W~~ with Commission. When information is requested or a notice in any matter is required to be filed with the Commission, such notice shall be delivered to an authorized representative of the Commission at an office of the Commission on or before the filing deadline. Offices of the Commission are currently located at: ~~State of~~ Utah ~~;~~ Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT 84116.

9. Public Inspection ~~O~~ of Documents. ~~All~~ ~~F~~ Forms adopted by the Commission together with ~~all~~ any ~~R~~ rules and other written statements of policy or interpretation; and ~~all~~ any final orders, decisions, and opinions, formulated, adopted, or used by the Commission in the discharge of its functions are available for public inspection at the above office.

10. Forms ~~A~~ and Instruction. The following forms and instructions for their use have been adopted by the Commission:

A. Apprentice Jockey Certificate;

B. Authorized Agent Agreement;

- C. Fingerprint Card;
- D. Identifier's Daily Report;
- E. Lease Agreement;
- F. Occupation License Application(s);
- G. Occupation License Renewal Application(s);
- H. Open Claim Certificate;
- I. Organization's Daily Report;
- J. Organization Licensee Application;
- K. Petition for Declaratory Ruling;
- L. Petition for Promulgation, Amendment or Repeal of Rule;
- M. Petition in and before the Utah Horse Commission;
- N. Postmortem Examination Report;
- O. Stable Name, Corporation, Partnership or Syndicate

Registration Form;

- P. Stewards' Daily Report;
- Q. Stewards' Hearing Notice;
- R. Stewards' Hearing Reports;
- S. Subpoena (Steward and Commission); and
- T. Test Barn Diuretic Approval Form.

11. Forms for substituting petitions for promulgating or repealing of rules, and for requests for declaratory ruling are available at the Utah [State] Department of Agriculture and Food.

**R52-7-4. Racing Organization.**

1. Allocation [O]of Racing Dates. The Commission shall allocate racing dates for the conduct of horse race meetings within this State for such time periods and at such racing locations as the Commission determines will best serve the interests of the people of [the State of] Utah in accordance with Title 4, Chapter 38, the Utah Horse Regulation Act. Upon a finding by the Commission that the allocation of racing dates for any year is completed, the racing dates [se]allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of allocation.

2. Application [F]for License [A]and Days [F]to Conduct [A]a Horse Race Meeting. [Every]Each person who intends to conduct a horse race meeting shall file such application with the Commission no later than August 1 of the preceding calendar year. Any prospective applicant for license and days to conduct a horse race meeting failing to timely file the application for license may be disqualified and its application for license refused summarily by the Commission.

3. Commission [M]may Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting.[; aH] in addition to that required in the application form set forth in Subsection R52-7-4(4) and as required by Section 4-38-4.

4. Application [F]for Organization License. Any person desiring to conduct a horse race meeting where the public is charged an admission fee shall apply to the Commission for an organization license. The application shall be made on a form prescribed and furnished by the Commission. The application shall contain the following information:

- A. [F]the dates on which and location where the applicant intends to conduct the race meeting[-];
- B. [F]the name and mailing address of the person making the application[-];

[+C]. [F]if the applicant is a corporation, a certified copy of the Articles of Incorporation and Bylaws[;], the names and mailing addresses of [aH]any stockholders who own at least 3% of the total stock

issued by the corporation, officers, and directors[;], and the number of shares of stock owned by each[-];

[2]D. [F]if the applicant is a partnership, a copy of the partnership agreement, and the names and mailing addresses of [aH] ]general and limited partners with a statement of their respective interest in the partnership[-];

[E]E. a [D]description of photographic equipment, video equipment, and copies of any proposed lease or purchase contract or service agreement in connection therewith[-];

[D]F. [C]copies of any agreements with concessionaires or lessees, together with schedules of rates charged for performance of any service or for sale of any article within the enclosure, whether directly or through the concessionaire[-];

[E]G. [S]schedule of admission price(s) to be charged[-];

[F]H. [A]applicants [must]shall submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year. [All f]Financial information shall be accompanied by an unqualified opinion of a Certified Public Accountant[;], or if the opinion is given with qualifications, the reasons for the qualifications [must]shall be stated[-];

[G]I. [A]a schedule of stall rent, entry fees, or any other charges to be made to the horsemen or public not mentioned above[-]; and

[H]J. [A]any other information the Commission may require. For applicants requesting to conduct non pari-mutuel racing, the licensee fee shall not be less than \$25.00.

5. A separate application upon a form prescribed and furnished by the Commission shall be filed for each race meeting which such person proposes to conduct. The application, if made by a person, shall be signed and verified under oath by the person; and if made by more than one person or by a partnership, shall be signed and verified under oath by at least two of the persons or members of the partnership; and if made by an association, a corporation, or any other entity, shall be signed by the President, attested to by the Secretary under the seal of such association or corporation, if it has a seal, and verified under oath by one of the signing officers.

6. No person shall own any silent or undisclosed interest in any entity requesting an organization license. No organization license shall be issued to any applicant that fails to comply with provisions of this [R]rule. No incomplete license application shall be considered by the Commission.

[H]Z. In considering the granting or denying of [aH]an organization's application for a license to conduct horse racing with the non pari-mutuel system of wagering, the following criteria, standards, and guides should be considered by the Commission:

- [+A]. [P]public [F]interest;
- a. [S]safety;
- b. [M]morals;
- c. [S]security;
- d. [M]municipal [C]comments;
- e. [Revenues: S]state and [L]local revenues;

[2]B. [F]track [L]location;

- a. [F]traffic [F]flow;
- b. [S]support [S]services [(+e.)such as hotels, restaurants, etc.];

- c. [L]labor [S]supply;
- d. [P]public [S]services [(+e.)such as police, fire, etc.];
- e. [P]proximity to [C]competition;

[3]C. [N]umber of [F]tracks [R]unning or [M]aking [A]pplication;

- a. [S]ize;
- b. [F]type of [R]acing;
- c. [P]days;

[4]D. [A]dequacy of [F]track [F]ilities;

[5]E. [E]xperience in [R]acing of [A]pplicant and [M]anagement;

- a. [L]ength;
- b. [F]type;
- c. [S]uccess or [F]ailure;

[6]F. [F]inancial [Q]ualifications of [A]pplicant, [A]pplicant's [P]artners, [O]fficers, [A]ssociates, and [S]hareholders, ~~(To include including [C]ontract [S]ervices);~~

- a. [F]inancial [H]istory;

- (1) [R]ecords;
- (2) [N]et [W]orth;

[7]G. [Q]ualifications of [A]pplicant, [A]pplicant's [P]artners, [O]fficers, [A]ssociates, and [S]hareholders ~~(To include including [C]ontract [S]ervices);~~

- (1)a. [A]rrest [R]ecord;
- (2)b. [C]onviction [R]ecord;
- (3)c. [L]itigation [R]ecord, ~~([C]ivil [A] or [C]riminal);~~
- (4)d. [L]aw [E]nforcement [I]ntelligence;

[8]H. [O]fficial [A]ttitude of [L]ocal [G]overnment [I]nvolved;

[9]I. [A]nticipated [E]ffect [U]pon [B]reeding and [H]orse [I]ndustry in Utah;

[10]J. [E]ffect on [S]aturation of [N]on pari-[M]utuel [M]arket;

[11]K. [A]nticipated [E]ffect upon [S]tate's [E]conomy;

- a. [G]eneral [E]conomy;

- (1) [F]tourism;
- (2) [E]mployment;
- (3) [S]upport [I]ndustries;

- b. [G]overnment [R]evenue;

- (1) [F]direct or indirect tax ~~(Direct/Indirect);~~
- (2) [I]direct or indirect income ~~(Direct/Indirect);~~

[12]L. [A]ttitude of [L]ocal [C]ommunity [I]nvolved;

[13]M. [F]the [W]ritten [A]ttitude of [H]orse [I]ndustry [A]ssociations;

[14]N. [E]xperience and [C]redibility of [C]onsultants, [A]dvisors, and [P]rofessionals;

- a. [F]easibility;
- b. [C]redibility and [I]ntegrity of [F]easibility [S]tudy;

[15]O. [F]inancial and [E]conomic [I]ntegrity of [F]inancial [P]lan;

- (1)a. [E]quity;

- a-(1) [S]ource;
- b-(2) [A]mount;
- e-(3) [P]osition;
- d-(4) [F]type;

- (2)b. [D]ebt;

- a-(1) [S]ource;
- b-(2) [A]mount;
- e-(3) [F]terms;
- d-(4) [R]epayment;

- (3)c. [E]quity to [D]ebt [R]atio;

- a-(1) [I]ntegrity of [F]inancing [P]lan;
- (1)i. [I]dentity of [P]articipants;
- (2)ii. [R]ole of [P]articipants;
- (3)iii. [H]istory of [P]articipants;

(4)iv. [L]aw [E]nforcement [I]ntelligence; and

[16]P. [A]pparent or [N]on-[A]pparent [H]ope of [F]inancial [S]uccess;

[5]8. List [O]f Shareholders. Each organization shall, if a corporation or partnership, maintain a current list of shareholders and the number of shares held by each[s]. ~~and such~~ The list shall be available for inspection upon demand by the Commission or its representatives. The organization shall immediately inform the Commission of any change of corporate officers or directors, general or managing partners, or of any change in shareholders. ~~is provided, however, that~~ [I]f the organization is a publicly-held entity, it shall disclose the names and addresses of shareholders who own 3% of the outstanding shares of the organization. The organization shall immediately notify the Commission of ~~all~~ any stock options, tender offers, and any anticipated stock offerings. The Commission may refuse to issue a license to, or suspend the license of, any organization ~~which~~ that fails to disclose the real name of any shareholders.

[6]9. Denial [O]f License. The Commission may deny a license to conduct a horse racing meeting when in its judgment it determines the proposed meeting is not in the public interest, or fails to serve the purposes of Title 4, Chapter 38, the Utah Horse Regulation Act, or fails to meet any requirements of Utah State law or the Commission's rules. The Commission shall refuse to issue a license to any applicant who fails to provide the Commission with evidence of its ability to meet its estimated financial obligations for the conduct of the meeting.

[7]10. Duty [O]f Licensed Organization. Each organization shall observe and enforce the rules of the Commission. The license is granted on the condition that the organization, its officials, its employees, and its concessionaires shall obey ~~the~~ ~~all~~ decisions and orders of the Commission. The organization shall not allow any wagering within the enclosure of the racing facility ~~which~~ that might be construed as being in violation of the [L]aws of the State of Utah.

[8]11. Conditions [O]f A Race Meeting. The organization may impose conditions for its race meeting as it may deem necessary; provided, however, that such conditions may not conflict with any requirements of Utah State Law or the [R]ules, [R]egulations and [O]rders of the Commission. Such conditions shall be published in the Condition Book or otherwise made available to ~~all~~ licensees participating in its race meeting. A copy of the conditions and nomination race book shall be published no later than 45 days prior to the commencement of the race meeting. A proof of such conditions and nomination race book shall be filed with the Commission no later than 45 days prior to printing. The conditions and nomination race book is subject to the approval of the Commission. The organization may impose requirements, qualifications, requisites, and track rules for its race meeting as it may deem necessary; provided such requirements, qualifications, and track rules do not conflict with Utah State Law or the [R]ules, [R]egulations, and [O]rders of the Commission. Such information shall be published in the Condition Book, posted on the organization's bulletin boards, or otherwise made available to ~~all~~ licensees participating at its race meeting.

[A]ny requirements, qualifications, requisites or track rules imposed by the organization require prior review and approval by the Commission, ~~which~~ that reserves the right of final decision in ~~all~~ matters pertaining to the conditions of a race meeting.

[9]12. Right [O]f Commission [F]to Information. The organization may be asked to furnish the Commission, on forms approved by the Commission, a daily itemized report of the receipts of attendance, parking, concessions, commissions, and any other requested information. The organization shall also provide a corrected official program, completed race results charts approved by the Commission,

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and any other information the Commission may require. Such daily reports shall be filed with the Commission within 72 hours of the race day.

1[0]3. Duty [F]to Compile Official Program. The organization shall compile an official program for each racing day [which]that shall contain the names of the horses [which]that are to run in each race together with their respective post positions, post time for first race, age, color, sex, breeding, jockey, trainer, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run, the value of each race, a list of Racing Officials and track management personnel, and any other information the Commission may require. The Commission may direct the organization to publish in the program any other information and notices to the public as it deems necessary.

1[4]4. Duty [F]to Maintain Racing Records. The organization shall maintain a complete record of [all]races of [all]each authorized race meeting[s] of the same type of racing being conducted by the organization, and such records shall be maintained and retained for a period of five years. This requirement may be met by race records of Triangle Publications, the American Quarter Horse Association, the Appaloosa Horse Club, the American Paint Horse Association, other breed registry associations' racing records department, or other racing publications approved by the Commission.

1[2]5. Horsemen's Bookkeeper. The organization shall employ a Horsemen's Bookkeeper who shall maintain records as the organization and Commission shall direct. The records shall include the name, address, social security or federal identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horseman's account. The Horsemen's Bookkeeper shall keep the riding accounts of the jockeys and shall disburse the received fees to the proper claimants. It shall be the duty of the Horsemen's Bookkeeper to receive and disburse the purses of each race and [all]any stakes, entrance money, jockey fees, and other monies that properly come into his possession, and make disbursements within 48 hours of receipt of notification from the testing laboratory that drug tests have cleared unless an appeal or protest has been filed with the Stewards or the Commission. The Horsemen's Bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.[;] [except u]Upon written request, the Horsemen's Bookkeeper shall, within 30 days after the meeting, disburse [all]any monies to the persons entitled to receive them[ same]. The Horsemen's Bookkeeper shall maintain a file of [all]required statements of partnerships, syndicates, corporations[;], assignments of interest[;], lease agreements[;], and registrations of authorized agents. [All F]Records and monies of the Horsemen's Bookkeeper shall be kept separate and apart from any other of the organization and are subject to inspection by the Commission at any time.

1[3]6. Accounting Practices [A]and Responsibility. The organization and its managing officers shall ensure that [all]purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the [Act]state law, the [R]rules and [R]regulations of the Commission, the organization rules, and race conditions. Copies of [all]nomination payment race contracts, agreements, and conditions shall be submitted to the Commission and related reporting requirements fulfilled as specified by the Commission. Subject to approval of the Commission, the organization shall maintain on a current basis a bookkeeping and accounting program under the guidance of a Certified Public Accountant. The Commission may require periodic audits to determine that the organization has funds available to meet those distributions for

the purposes required by [the Act]state law, the [R]rules and [R]regulations of the Commission, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race meeting. Annually, the organization shall file a copy of all tax returns, a balance sheet, and a profit and loss statement.

1[4]7. Electronic Photo Finish Device. [All]Each organization[s] shall install and maintain in good service an electronic photo finish device for photographing the finishes of [all]races and recording the time of each horse in hundredths of a second, when applicable, to assist the placing judges and the Stewards in determining the finishing positions and time of the horses. Prior to first use, the electronic photo finish device must be approved by the Commission,[;] and a calibration report [must]shall be filed with the Commission by January 1 of each year. A photograph of each finish shall be promptly posted for public view in at least one conspicuous place in the public enclosure.

1[5]8. Videotape Recording [O]of Races. [All]Each organization[s] shall install and operate a system to provide a videotape recording of each race so that such recording clearly shows the position and action of the horses and jockeys at close enough range to be easily discernible. A video monitor shall be located in the Stewards' Tower to assist in reviewing the running of the races. Prior to first use, the videotape recording system and location and placement of its equipment [must]shall be approved by the Commission. [Every]Each race other than a race run solely on a straight course may be recorded by use of at least two cameras to provide panoramic and head-on views of the race. Races run solely on the straight course shall be recorded by the use of at least one camera to provide a head-on view. Except with prior approval of the Commission, [all]organizations shall maintain an auxiliary videotape recording camera and player in case of breakdown [and]or malfunction of a primary videotape recording camera or player.

1[6]9. Identification [O]of Photo Finish Photographs [A]and Videotape Recordings. [All P]Photo finish photographs and video-tape recordings required by these [R]rules shall be identified by indicating thereon, the date, number of the race, and the name of the racetrack at which the race is held.

[47]20. Altering Official Photographs [O]or Recordings. No person shall cut, mutilate, alter or change any photo finish photograph or videotape recording for the purpose of deceit or fraud of any type.

[48]21. Preservation [O]of Official Photographs [A]and Recordings. [All O]Organizations shall preserve [all]any photographic negatives and videotape recordings of [all]races for at least 180 days after the close of their meeting. Upon request of the Commission, the organization shall furnish the Commission with a clear, positive print of any photograph of any race, or a kinescope print or copy of the videotape recording of any race.

[49]22. Viewing Room Required. The organization shall maintain a viewing room for the purpose of screening the videotape recording of the races for viewing by Racing Officials, jockeys, trainers, owners, and other interested persons authorized by the Stewards.

2[0]3. Office Space [F]for The Commission. The organization shall provide within the enclosure adequate office space for use by the Commission and its authorized representatives, and shall provide such necessary office furniture and utilities as may be required for the conduct of the Commission's business and the collection of the public revenues at [such]the organization's meetings.

2[4]4. Duty [F]to Receive Complaints. The organization shall maintain a place where written complaints or claims of violations [for]objections[;] of racetrack rules, regulations, and conditions; Commission Rules and Regulations; or Utah State Laws may be filed. A copy of any written complaint or claim filed with the organization



shall be filed by the organization with the Commission or Commission representatives within 24 hours of receipt of the complaint or claim.

2[2]5. Bulletin Boards Required. The organization shall erect and maintain a glass enclosed bulletin board close to the Racing Secretary's Office in a place where access is granted to [all] licensees, upon which [all] official notices of the Commission shall be posted. The organization shall also erect and maintain a glass enclosed bulletin board in the grandstand area where access is granted to [all] race day patrons, upon which [all] official notices of the Commission shall be posted.

2[3]6. Communication Systems Required. The organization shall install and maintain in good service a telephonic communication system between the Stewards' stand, racing office, jockey room, paddock, testing barn, starting gate, video camera locations, and other designated places. The organization shall also install and maintain in good service a public address communication system for the purpose of announcing the racing program, the running of the races, and any public service notices, as well as maintaining communications with the barn area for the purpose of paddock calls and the paging of horsemen.

2[4]7. Ambulance Service. Subject to the approval of the Commission, the organization shall provide the services of an approved medical ambulance and its properly qualified attendants [at all times] during the running of the race program at its meeting and, except with prior permission of the Commission, during the hours the organization permits the use of its race course for training purposes. The organization shall also provide the service of a horse ambulance during the same hours. A means of communication shall be provided by the organization between a staffed observation point [such as the Stewards' Tower and Clocker's Stand] for the race course and the place where the required ambulances and their attendants are posted for prompt response in the event of accident to any person or horse. In the event an emergency necessitates the departure of a required ambulance, the race course shall be closed until an approved ambulance is again available within the enclosure.

2[5]8. Safety [of] Race Course [and] Premises. The organization shall take cognizance of any complaint regarding the safety or uniformity of its race course or premises, and shall maintain in safe condition the race course and [all] rails and other equipment required for the conduct of its races.

2[6]9. Starting Point Markers [and] Distance Poles. Permanent markers [must] shall be located at each starting point to be utilized in the organization's racing program. The starting point markers and distance poles [must] shall be of a size and in a position where they can be seen clearly from the stewards' stand. The starting point markers and distance poles shall be marked with the appropriate distance and be the following colors:

TABLE

1/16 poles . . .	black and white horizontal stripes
1/8 poles . . .	green and white horizontal stripes
1/4 poles . . .	red and white horizontal stripes
220 yards . . .	green and white horizontal stripes
250 yards . . .	blue
300 yards . . .	yellow
330 yards . . .	black and white horizontal stripes
350 yards . . .	red
400 yards . . .	black
440 yards . . .	red and white horizontal stripes
550 yards . . .	black and white horizontal stripes
660 yards . . .	green and white horizontal stripes
770 yards . . .	black and white horizontal stripes
870 yards . . .	blue and white horizontal stripes

[27]30. Grade [A] and Distance Survey. A survey by a licensed surveyor of the race course, including [all] starting chutes, indicating the grade and measurement of distances to be run [must] shall be filed with the Commission prior to the first race meeting.

[28]31. Physical Requirements [F] for Non pari-Mutuel Racing Facility. In order for an organization to be granted a license to conduct non pari-mutuel racing, the facility shall meet the following physical requirements:

A. A regulation track shall be a straightaway course of 440 yards in length. The straightaway shall connect with an oval not less than one-half mile in circumference; except that the width may vary according to the number of horses started in a field, but a minimum of twenty feet shall be allowed for the first two horses with an additional five feet for each added starter.

B. The inner and outer rails shall extend the entire length of the straightaway and around the connecting oval; it shall be at least thirty inches and not more than forty-two inches in height. A racetrack not approved by the Commission prior to January 1, 1993, shall otherwise have inner and outer rails of at least thirty-eight inches [38"] and not more than forty-two inches in height. It shall be constructed of metal not less than two inches in diameter, wood not less than two inches in thickness and six inches in width, or other construction material approved by the Commission. Whatever construction material is used must provide for the safety of both horse and rider. It [must] shall be painted white and maintained at all times.

C. Stabling facilities should be adequate for the number of horses to be on hand for the meet. In no case will a track with less than 200 stalls be acceptable, without Utah Horse Commission approval.

D. Stands for Stewards and Timers shall be located exactly on the finish line and provide a commanding and uninterrupted view of the entire racing strip.

E. The paddock shall be spacious enough to provide adequate safety. The jockey's room shall be in or adjacent to the paddock enclosure and shall be equipped with separate but equal complete sanitation facilities including showers for both male and female riders. This area [must] shall be fenced to keep out unauthorized persons and provide maximum security and safety. The fence shall be at least four feet high of chain link, v-mesh or similar construction.

F. A Test Barn with a minimum of two stalls shall be provided for purpose of collecting urine specimens. The Test Barn and a walking ring large enough to accommodate several horses cooling out at the same time shall be completely enclosed by a fence at least eight feet high of chain link, v-mesh or similar construction. There shall be only one entrance into the Test Barn enclosure [which] that shall remain locked or guarded [at all times]. Provisions shall be made in this area for an office to accommodate the needs of the Official Veterinarian and from which he can observe the stalls and the entrance into the Test Barn enclosure. The organization shall provide facilities for the immediate cooling and freezing of [all] urine specimens, and shall make provisions for the specimens to be shipped to the laboratory packed in dry ice.

G. A grandstand or bleachers shall be provided for the spectators and shall provide for the comfort and safety of the spectators. Facilities [must] shall include rest rooms and a public water supply.

[29]32. Organization [A] as [F] the Insurer [of] [F] the Race Meeting. Approval of a race meeting by the Commission does not establish [said] the Commission as the insurer or guarantor of the safety or physical condition of the organization's facilities or purse of any race. The organization does thereby agree to indemnify, save and hold harmless the Utah Horse Commission from any liability, if any, arising from unsafe conditions of track facilities or grandstand and default in payment of purses. The organization shall provide the Commission with a certificate of adequate liability insurance.

**R52-7-5. Occupation Licensing and Registration.**

1. Occupation Licenses. No person required to be licensed shall participate in a race meeting without their holding a valid license authorizing ~~that~~ participation. Licenses shall be obtained prior to the time ~~such~~ persons engage in their vocations upon ~~such~~ racetrack grounds at any time during the calendar year for which the organization license has been issued. Each ~~A~~ applicant will be required to provide one form of photo identification.

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses.

B. A person acting in any of the following capacities shall pay the required fee and procure the appropriate license or licenses~~:~~. ~~{~~A list of ~~all~~ required fees shall be available at the Utah Department of Agriculture and Food.~~}~~

- ~~1~~a. ~~O~~wner, ~~F~~trainer ~~C~~ombination;
- ~~2~~b. ~~O~~wner;
- ~~3~~c. ~~F~~trainer;
- ~~4~~d. ~~A~~ssistant ~~F~~trainer;
- ~~5~~e. ~~J~~ockey;
- ~~6~~f. ~~V~~eterinarian;
- ~~7~~g. ~~J~~ockey ~~R~~oom ~~A~~ttendant;
- ~~8~~h. ~~P~~addock ~~A~~ttendant;
- ~~9~~i. ~~P~~ony ~~R~~ider;
- ~~10~~j. ~~C~~oncessionaire;
- ~~11~~k. ~~V~~alet;
- ~~12~~l. ~~G~~room;

C. A person whose license-identification badge is lost or destroyed shall procure a replacement license-identification badge and shall pay the required fee.

D. The date of payment of ~~all~~ required fees, as recorded by the Commission, shall be the effective date of issuance of a continuous occupation license. A person may have the option of a one or three year license. The license fee shall be the annual fee for each category in which the person is licensed, the fee for a three ~~{3}~~ year license shall be three ~~{3}~~ times the annual fee for each category in which the person is licensed. The license shall expire on December 31.

E. ~~All~~ Each license applicant[s] may be required to provide two complete sets of fingerprints on forms provided by or acceptable to the Commission and pay the required fee for processing the fingerprint cards through State and Federal Law Enforcement Agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be refingerprinted.

F. ~~All~~ Applicants for occupation licenses must be a minimum of 16 years of age. However, this shall not preclude dependent children under the age of 16 from working for their parents or guardian if ~~said~~ their parents or guardian are licensed as a trainer or assistant trainer and permission has been obtained from the organization licensee. A trainer or his authorized representative signing a Test Barn Sample Tag ~~must~~ shall be licensed and a minimum of 18 years of age.

2. Employment ~~of~~ Unlicensed Person. No organization, owner, trainer or other licensee acting as an employer within the enclosure at an authorized race meeting shall employ or harbor within the enclosure any person required to be licensed by the Commission until ~~such~~ the organization, owner, trainer, or other employer determines that ~~such~~ the person required to be licensed has been issued a valid license by the Commission. No organization shall permit any owner, trainer, or jockey to own, train, or ride on its premises during a recognized race meeting unless ~~such~~ the owner, trainer, or jockey has received a license to do so from the Commission. The organization or prospective employer may demand for inspection the license of any person participating or attempting to participate at its meeting, and the

organization may demand for inspection the documents relating to any horse on its grounds.

3. Notice ~~of~~ Termination. Any organization, owner, trainer, or other licensee acting as an employer within the enclosure at an authorized race meeting shall be responsible for the immediate notification to the Commission and the organization conducting the race meeting of a termination of employment of a licensee. The employer shall make every effort to obtain the license badge from the employee and deliver the license badge to the Commission.

4. Application ~~for~~ License. An applicant for license shall apply in writing on the application forms furnished by the Commission.

5. License Identification Badge Requirements. The license identification badge may consist of the following information concerning the licensee:

- A. ~~F~~ull ~~N~~ame;
- B. ~~P~~ermanent ~~A~~ddress;
- C. ~~L~~icense ~~C~~apacity;
- D. ~~D~~ate of ~~I~~ssue;
- E. ~~P~~assport-~~F~~type ~~C~~olor ~~P~~hotos; and
- F. ~~D~~ate of ~~B~~irth.
- G. ~~All~~ License identification badges may be color coded as

to capacity of occupation and eligibility for access to restricted areas. ~~All~~ License holders, except jockeys riding in a race, ~~must~~ shall wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R52-7-5(1).

6. Honoring Official Credentials. Credentials issued by the Commission may be honored for admission at ~~all~~ any gates and entrances and to ~~all~~ any places within the enclosure. Automobiles with vehicle decals issued by the Commission to its members and employees shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members, and staff shall be honored by the organization for admission into the public enclosure when presented therefore by such persons.

7. License Subject ~~to~~ Conditions ~~and~~ Agreements.

A. ~~Every~~ Each license is subject to the conditions and agreements contained in the application ~~thereof~~ and to ~~the~~ Statutes and Rules ~~state law~~.

B. ~~Every~~ Each license issued to a licensee by the Commission remains the property of the Commission.

C. Possession of a license does not ~~as such~~ confer any right upon the holder ~~thereof~~ to employment at or participation in a race.

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, pursuant to Subsection R52-7-5(9).

8. Changes ~~in~~ Application Information. Each licensee or applicant for license shall file with the Commission his permanent and his current mailing address and shall report in writing to the Commission any ~~and all~~ changes in application information.

9. Grounds ~~for~~ Denial, Refusal, Suspension ~~or~~ Revocation ~~of~~ License. The Commission, in addition to any other valid ground or reason, may deny, refuse to issue, suspend or revoke an occupation license for any person:

- A. ~~Who~~ who has been convicted of a felony of this State, any other state, or the United States of America;~~or~~
- B. ~~Who~~ who has been convicted of violating any law regarding gambling or controlled dangerous substance of this State, any other state, or of the United States of America;~~or~~
- C. ~~Who~~ who is unqualified to perform the duties required of the applicant;~~or~~
- D. ~~Who~~ who fails to disclose or states falsely any information required in the application;~~or~~

E. ~~[W]~~who has been found guilty of a violation of any provision of the Utah Horse Act or of the Rules and Regulations of the Commission;~~[or]~~

F. ~~[W]~~whose license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused, or denied for just cause in any other competent racing jurisdiction; or

G. ~~[W]~~who has been or is currently excluded from any racing enclosure by a competent racing jurisdiction.

10. Examinations. The Commission may require the applicant for any license to demonstrate his knowledge, qualifications, and proficiency for the license applied for by ~~[such]~~examination as the Commission may direct.

11. Refusal Without Prejudice. A refusal to issue a license, ~~[as distinguished from a denial of a license]~~ to an applicant by the Commission at any race meeting is without prejudice~~;~~, and the applicant ~~[so]~~refused may reapply for a license at any subsequent or other race meeting, or he may appeal ~~[such]~~the refusal to the Commission for hearing upon his qualifications and fitness for the license.

12. Hearing After Denial ~~[of]~~ License. Any person who has had his license denied may petition the Commission to reopen the case and reconsider its decision upon a sufficient showing that there is now available evidence which could not, with the exercise of reasonable diligence, have been previously presented to the Commission. Any such petition ~~[must]~~shall be filed with the Commission no later than 30 days after the effective date of the Commission's decision in the matter. Any person who has been denied a license by the Commission may not refile a similar application for license until one year from the effective date of the decision to deny the license.

13. Financial Responsibility ~~[of]~~ Applicants. Applicants for license as horse owner or trainer ~~[must]~~shall submit satisfactory evidence of their financial ability to care for and maintain the horses owned ~~[and]~~or trained by them when such evidence is requested by the Commission.

14. Physical Examination. The Commission or the Stewards may require that any jockey be examined at any time, and the Commission or the Stewards may refuse to allow any jockey to ride until he has successfully passed such examination.

15. Qualifications ~~[for]~~ Jockey. No person under 16 years of age shall be granted a jockey's license. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey unless he has satisfactorily worked a horse from the starting gate in company, before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a jockey's license granting permission to ~~[such]~~a person for the purpose of riding in not more than four races to establish the qualifications and ability of ~~[such]~~the person for the license. Subsequently, the Stewards may recommend the granting of a jockey's license.

16. Jockey Agent. A jockey agent is the authorized representative of a jockey if he is registered with the Stewards and licensed by the Commission as the Jockey's representative. No jockey agent shall represent more than two jockeys at the same time.

17. Workers' Compensation Act Compliance. No person may be licensed as a trainer, owner, or in any other capacity in which ~~[such]~~the person acts as the employer of any other licensee at any authorized race meeting, unless his liability for Workers' Compensation has been secured in accordance with Title 34A, Chapter 2, the Workers' Compensation Act of ~~[the State of]~~Utah and until evidence of ~~[such]~~security for liability is provided the Commission. Should any ~~[such]~~required security for liability for Workers' Compensation be canceled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license. If a license

applicant certifies that ~~[he]~~they ha[s]ve no employees that would subject ~~[him]~~them to liability for Workers' Compensation, ~~[he]~~they may be licensed, but only for the period ~~[he has]~~they have no employees.

18. Program Trainer Prohibited. No licensed trainer, for the purpose of avoiding his responsibilities or insurance requirements as set forth in these ~~[R]~~rules, shall place any horse in the care or attendance of any other trainer.

19. Qualifications ~~[for]~~ License ~~[as]~~ Horse Owner. No person may be licensed as a horse owner who is not the owner of record of a properly registered race horse ~~[which]~~that he intends to race in Utah and which is in the care of a licensed trainer, or who does not have an interest in such race horse as a part owner or lessee, or who is not the responsible managing owner of a corporation, syndicate, or partnership ~~[which]~~that is the legal owner of such horse.

20. Horse Ownership ~~[by]~~ Lease. Horses may be raced under lease provided a completed Utah Horse Commission, breed registry, approved pari-mutuel, or other lease form acceptable to the Commission, is attached to the Registration Certificate and on file with the Commission. The lessor~~(s)~~ and lessee ~~[must]~~shall be licensed as horse owners. No lessor shall execute a lease for the purpose of avoiding insurance requirements.

21. Statements ~~[of]~~ Corporation, Partnership, Syndicate ~~[or]~~ Other Association ~~[or]~~ Entity. ~~[All]~~Any organizational documents of a corporation, partnership, syndicate, or other association or entity, and the relative proportion of ownership interest, the terms of sales with contingencies, arrangements, or leases, shall be filed with the Horsemen's Bookkeeper of the organization and with the Commission. The ~~[above said]~~documents shall declare to whom winnings are payable, in whose names the horses shall be run, and the name of the licensed person who assumes ~~[all]~~any responsibilities as the owner. The part owner of any horse shall not assign his share or any part of it without the written consent of the other partners, and ~~[such]~~consent shall be filed with the Horsemen's Bookkeeper and the Commission. A person ~~[or persons]~~conducting racing operations as a corporation, partnership, syndicate, or other association or entity shall register the information required by this [R]rule[s in this Article] and pay the required fee~~(s)~~ for the appropriate entity.

22. Stable Name Registration. A person ~~[or persons]~~electing to conduct racing operations by use of a stable name shall register the stable name and shall pay the required fee.

A. The applicant ~~[must]~~shall disclose the identity or identities of ~~[all]~~persons comprising the stable name.

B. Changes in identities ~~[must]~~shall be reported ~~[immediately]~~ to and approval shall be obtained from the Commission immediately.

C. No person shall register more than one stable name at the same time nor use ~~[his]~~their real name for racing purposes so long as ~~[he has]~~they have a registered stable name.

D. Any person who has registered under a stable name may cancel the stable name after ~~[he has]~~they have given written notice to the Commission.

E. A stable name may be changed by registering a new stable name and by paying the required Fee.

F. No person shall register a stable name which has been registered by any other person with any organization conducting a recognized race meeting.

G. A stable name shall be clearly distinguishable from that of another registered stable name.

H. The stable name, and the name of the owner or managing owner, shall be published in the official program. If the stable name consists of more than one person, the official program will list the name of the managing owner along with the phrase "et al."

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I. If a partnership, corporation, syndicate, or other association or entity is involved in the identity comprising a stable name, the rules covering a partnership, corporation, syndicate or other association or entity ~~must~~ shall be complied with and the usual fees paid therefore in addition to the fees for the registration of a stable name.

23. Ownership Licensing Required. The ownership licensing procedures required by the Commission ~~must~~ shall be completed prior to the horse starting in a race and shall include ~~all~~ any registrations, statements, and payment of fees.

24. Knowledge ~~of~~ Rules. ~~Every~~ Each licensee, in order to maintain their qualifications for any license held by them, shall be familiar with and knowledgeable of the rules, including ~~all~~ any amendments. ~~Every~~ Each licensee is presumed to know the rules.

25. Certain Prohibited Licenses. Commission-licensed jockeys, veterinarians, organizations' security personnel, vendors, and ~~such~~ other licensees designated by the stewards with approval of the Commission, shall not hold any other license. The Commission may refuse to issue a license to a person whose spouse holds a license and which, in the opinion of the Commission, would create a conflict of interest.

**R52-7-6. Racing Officials and Commission Racing Personnel.**

1. Racing Officials. The racing officials of a race meeting, unless otherwise ordered by the Commission, are as follows:

- ~~A.~~ the stewards~~;~~;
- ~~B.~~ the associate judges~~;~~;
- ~~C.~~ the paddock judge~~;~~;
- ~~D.~~ the starter~~;~~;
- ~~E.~~ the identifier ~~or~~ tattooer~~;~~; and
- ~~F.~~ the racing secretary.

2. No racing official may serve in that capacity during a race in which is entered a horse owned by them or by a member of their family or in which they have any financial interest except for the identifier ~~or~~ tattooer, and the racing secretary. Being the lessee or lessor of a horse shall be construed as having a financial interest.

2~~3~~3. Responsibility ~~to~~ ~~the~~ Commission. The racing officials shall be strictly responsible to the Commission for the performance of their ~~respective~~ duties, and they shall promptly report to the Commission or its stewards any violation of the rules of the Commission coming to their attention or of which they have knowledge. Any racing official who fails to exercise due diligence in the performance of ~~his~~ their duties shall be relieved of ~~his~~ their duties by the stewards and the matter referred to the Commission.

3~~4~~4. Racing Officials Subject ~~to~~ Approval. ~~Every~~ Each racing official is subject to prior approval by the Commission before being eligible to act as a racing official at the meeting. At the time of making application for an organization license, the organization shall nominate the racing officials other than the racing officials appointed by the Commission ~~and~~ ~~a~~ After issuance of license to the organization, there shall be no substitution of any racing official except with approval of the stewards or the Commission.

4~~5~~5. Racing Officials Appointed ~~by~~ The Commission. The Commission shall appoint the following racing officials for a race meeting: The board of three stewards and the identifier ~~or~~ tattooer. The Commission may appoint from the approved stewards list one steward to serve as state steward.

5~~6~~6. Racing Personnel Employed ~~by~~ ~~the~~ Commission. The Commission shall employ the services of the licensing person for a race meeting.

6~~7~~7. General Authority ~~of~~ Stewards. The stewards have general authority and supervision over ~~all~~ licensees and other persons attendant on horses, and also over the enclosures of any recognized

meeting. Stewards have the power to interpret the ~~R~~ rules and to decide ~~all~~ questions not specifically covered by them. The stewards shall have the power to determine ~~all~~ questions arising with reference to entries, eligibility, and racing; and ~~all~~ entries, declarations, and scratches shall be under the supervision of the stewards. The stewards shall be strictly responsible to the Commission for the conduct of the race meeting in every particular.

7~~8~~8. Vacancy Among Racing Officials. Where a vacancy occurs among the racing officials, the stewards shall fill the vacancy immediately. ~~Such~~ The appointment is effective until the vacancy is filled in accordance with the rules.

9~~8~~8. Jurisdiction ~~of~~ Stewards ~~to~~ Suspend ~~or~~ Fine. The stewards' jurisdiction in any matter commences 72 hours before entries are taken for the first day of racing at the meeting and extends until 30 days after the close of such meeting. In the event a dispute or controversy arises during a race meeting ~~which~~ that is not settled within the stewards' thirty-day jurisdiction, then the authority of the stewards may be extended by authority of the Commission for the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission. The stewards may suspend for not more than one year per violation, the license of anyone whom they have the authority to supervise; or they may impose a fine not to exceed \$2,500 per violation; or they may exclude from ~~all~~ enclosures in this state; or they may suspend and fine ~~and~~ or exclude. ~~All such~~ Any suspensions, fines, or exclusions shall be reported immediately to the Commission. The ~~S~~ stewards may suspend a horse from participating in races if the horse has been involved in a violation~~s~~ of the rules ~~promulgated by~~ of the Commission or the provisions of Title 4, Chapter 38, the Utah Horse Act under the following circumstances:

A. ~~A~~ a horse is a confirmed bleeder as determined by the ~~o~~ Official ~~v~~ Veterinarian, and the ~~o~~ Official ~~v~~ Veterinarian recommends to the stewards that the horse be suspended from participation~~;~~;

B. ~~A~~ a horse is involved with:  
i~~a~~a. ~~A~~ any violation of medication laws and rules~~;~~;

ii~~b~~b. ~~A~~ any suspension or revocation of an occupation license by the stewards or the Commission or any racing jurisdiction recognized by the Commission; or  
iii~~c~~c. ~~A~~ any violation of prohibited devices, laws, and rules.

10~~9~~9. Referral ~~to~~ ~~the~~ Commission. The stewards may refer, with or without recommendation, any matter within their jurisdiction to the Commission.

11~~10~~10. Payment ~~of~~ Fines. ~~All~~ Any fines imposed by the stewards or Commission shall be due and payable to the Commission within 72 hours after imposition, except when the imposition of ~~such~~ the fine is ordered stayed by the stewards, the Commission, or a court having jurisdiction. However, when a fine and suspension is imposed by the stewards or Commission, the fine shall be due and payable at the time the suspension expires. Nonpayment of the fine when due and payable may result in immediate suspension pending payment of the fine.

12~~11~~11. Stewards' Reports ~~and~~ Records. The stewards shall maintain a record ~~which~~ that shall contain a detailed, written account of ~~all~~ questions, disputes, protests, complaints, and objections brought to the attention of the stewards. The stewards shall prepare a daily report concerning their race day activities which shall include fouls and disqualifications, disciplinary hearings, fines and suspensions, conduct of races, interruptions and delays, and condition of racing facility. The stewards shall submit the signed original of their report and record to the Executive Director of the Commission within 72 hours of the race day.

13[12]. Power [F]to Order Examination [O]of Horse. The stewards shall have the power to have tested, or cause to be examined by a qualified person, any horse entered in a race, [which]that has run in a race, or [which]that is stabled within the enclosure; and may order the examination of any ownership papers, certificates, documents of eligibility, contracts or leases pertaining to any horse.

14[13]. Calling Off Race. When, in the opinion of the stewards, a race[~~(s)~~] cannot be conducted in accordance with the rules of the Commission, they shall cancel and call off such race[~~(s)~~]. In the event of mechanical failure or interference during the running of a race [which]that affects the horses in such race, the Stewards may declare the race a "no contest." A race shall be declared "no contest" if no horse covers the course.

15[14]. Substitution [O]of Jockey [O]or Trainer.

A. In the event a jockey who is named to ride a mount in a race is unable to fulfill [his]their engagement and is excused by the stewards, the trainer of the horse may select a substitute jockey; or, if no substitute jockey is available, the stewards may scratch the horse from the race. However, the responsibility to provide a jockey for an entered horse remains with the trainer[;], and the scratching of [said]the horse by the stewards shall not be grounds for the refund of any nomination, sustaining, penalty payments, or entry fees.

B. In the absence of the trainer of the horse, the stewards may place the horse in the temporary care of another trainer of their selection; however, such horse may not be entered or compete in a race without the approval of the owner and the substitute trainer. The substitute trainer must sign the entry card.

16[15]. Stewards' List. The stewards may maintain a stewards' list of those horses [which]that, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other reason considered a hazard to the safety of the participants. [Such]The horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

17[16]. Duties [O]of [F]the Starter. The starter shall have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure [all]-participants have an equal opportunity to a fair start. The starter shall appoint [his]-assistants; however, he shall not permit [his]-assistants to handle or take charge of any horse in the starting gate without his expressed permission. In the event that organization starter assistants are unavailable to head a horse, the responsibility to provide qualified individuals to head [and/]or tail a horse in the starting gate shall rest with the trainer. The starter may establish qualification for and maintain a list of [such]-qualified individuals approved by the stewards. No assistant starter or any individual handling a horse at the starting gate shall in any way impede, whether intentionally or otherwise, the start of the race; nor may an assistant starter or other individual, except the jockey handling the horse at the starting gate, apply a whip or other device in an attempt to load any horse in the starting gate. No one other than the jockey shall slap, boot, or otherwise attempt to dispatch a horse from the starting gate.

18[17]. Starter's List. The starter may maintain a starter's list of [all]-horses [which]that, in [his]their opinion, are ineligible to be entered in any race because of poor or inconsistent performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter or [his]their representatives that it has been satisfactorily schooled in the gates and can be removed from the starter's list. [Such s]Schooling shall be under the direct supervision of the starter or [his]their representatives.

19[18]. Duties [O]of [F]the Paddock Judge. The paddock judge shall supervise the assembling of the horses scheduled to race, the saddling of horses in the paddock, the saddling equipment and changes thereof, the mounting of the jockeys, and their departure for the post. The paddock judge shall provide a report on saddling equipment to the [S]stewards at their request.

20[19]. Duties [O]of Patrol Judges. The patrol judges, when utilized, shall be subject to the orders of the stewards and shall report to the stewards [all]any facts occurring under their observation during the running of a race.

21[20]. Duties [O]of Placing Judges [A]and Timers. The placing judges, timers, [and/]or stewards shall occupy the judges' stand at the time the horses pass the finish line[; and]. [t]Their duties shall be to hand time, place the horses in the correct order of finish, and report the results. In case of a dead heat or a disagreement as to the correct order of finish, the decision of the stewards shall be final. In placing the horses at the finish, the position of the horses' noses only shall be considered the most forward point of progress.

22[21]. Duties [O]of The Clerk [O]of Scales. The clerk of scales is responsible for the presence of [all]-jockeys in the jockey's room at the appointed time and to verify that [all]-jockeys have a current Utah jockey's license. The clerk of scales shall verify the correct weight of each jockey at the time of weighing out and when weighing in, and shall report any discrepancies to the stewards immediately. In addition, [he or she]they shall be responsible for the security of the jockey's room and the conduct of the jockeys and their attendants. [He or she]they shall promptly report to the stewards any infraction of the [R]rules with respect to weight, weighing, riding equipment, or conduct. [He or she]They shall be responsible for accounting of [all]data required on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day.

23[22]. Duties [O]of [F]the Racing Secretary. The racing secretary shall write and publish conditions of [all]-races and distribute them to horsemen as far in advance of the closing of entries as possible. [He or she]They shall be responsible for the safekeeping of registration certificates and the return of same to the trainers on request or at the conclusion of the race meeting. [He or she]They shall record winning races on the form supplied by the breed registry, which shall remain attached to or part of the registration certificate. The racing secretary shall be responsible for the taking of entries, checking eligibility, closing of entries, selecting the races to be drawn, conducting the draw, posting the overnight sheet, compiling the official program, and discharging [such]-other duties of their office as required by the rules or as directed by the [S]stewards.

24[23]. Duties [O]of Associate Judge. An associate judge may perform any of the duties [which]that are performed by any racing official at a meeting, provided such duties are assigned or delegated to them by the Commission or by the stewards presiding at that meeting.

25[24]. Duties [O]of [F]the Official Veterinarian. The [o]Official [v]Veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. [He or she]They shall recommend to the stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. [He or she]They shall supervise the taking of [all]-specimens for testing according to procedures approved by the Commission. [He or she]They shall provide proper safeguards in the handling of [all]-laboratory specimens to prevent tampering, confusion, or contamination. [All-s]Specimens collected shall be sent in locked and sealed cases to the laboratory. [He or she]They shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. The [o]Official [v]Veterinarian shall report to the Commission the names of [all]-horses humanely destroyed or [which]that otherwise expire at the meeting, and

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the reasons therefore. The official veterinarian may place horses on a veterinarian's list, and may remove from the list those horses ~~which~~ that, in their opinion, cannot satisfactorily compete in a race.

~~26~~<sup>25</sup>. Veterinarian's List. The ~~Official~~ ~~Veterinarian~~ may maintain a list of ~~all~~ horses who, in their opinion, are incapable of safely performing in a race and are, therefore, ineligible to be entered or started in a race. Such horse may be removed from the Veterinarian's List when, in the opinion of the ~~Official~~ ~~Veterinarian~~, the horse has satisfactorily recovered the capability of performing in a race. The reasons for placing a horse on the veterinarian's list shall include the shedding of blood from one or both nostrils following exercise or the performance in a race and the running of a temperature unnatural to the horse.

~~27~~<sup>26</sup>. Duties ~~of~~ ~~the~~ Identifier. The identifier shall identify ~~all~~ horses starting in a race. The identifier shall inspect documents of ownership, eligibility, registration, or breeding as may be necessary to ensure proper identification of each horse eligible to compete at a race meeting provide assistance to the stewards in that regard. The identifier shall immediately report to the paddock judge and the stewards any horse ~~which~~ that is not properly identified or any irregularities reflected in the official identification records. The identifier shall report to the stewards and to the Commission on general racing practices observed, and perform ~~such~~ other duties as the Commission may require. The identifier shall report to the racing secretary before the close of the race day business.

### **R52-7-7. Entries and Declarations.**

1. Control Over Entries ~~and~~ Declarations. ~~All~~ Entries and declarations are under the supervision of the ~~Stewards~~ or their designee; and they, without notice, may refuse the entries any person or the transfer of entries.

2. Racing Secretary ~~to~~ Establish Conditions. The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and ~~such~~ other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for ~~all~~ races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of ~~such~~ the race shall be changed, amended or altered, nor shall any new condition for ~~such~~ the race be imposed.

3. Entries. No horse shall be entered in more than one race on the same day. No person shall enter or attempt to enter a horse for a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if racing conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. Entries shall be in writing on the entry card provided by the organization and must be signed by the trainer or assistant trainer of the horse. Entries made by telephone are valid properly confirmed by the track when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the trainer or his assistant trainer.

4. Determining Eligibility. Determination of a horse's eligibility, penalty or penalties and the right to allowance or allowances for ~~all~~ races shall be from the date of the horse's last race unless the conditions specify otherwise. The trainer is responsible for the eligibility of ~~his~~ their horse and to properly enter his horse in condition. In the event the records of the Racing Secretary or the appropriate breed

registry do not reflect the horse's most recent starts, the trainer or owner shall accurately provide such information. If a horse is not eligible under the first condition of any race, he cannot be eligible under subsequent conditions. If the conditions specify nonwinners of a certain amount, it means that the horse has not won a race in which the winner's share was the specified amount or more. If the conditions specify nonearners of a stated amount, it means that the horse has not earned that stated amount in any total number of races regardless of the horse's placing.

5. Entries Survive ~~with~~ Transfer. ~~All~~ Entries and rights of entry are valid and survive when a horse is sold with his engagements duly transferred. If a partnership agreement is properly filed with the Horsemen's Bookkeeper, subscriptions, entries, and rights of entry survive in the remaining partners. Unless written notice to the contrary is filed with the stewards, the entries, rights of entry, and engagements remain with the horse and are transferred therewith to the new owner. No entry or right of entry shall become void on the death of the nominator unless the conditions of the race state otherwise.

6. Horses Ineligible ~~to~~ ~~start~~ ~~in~~ ~~A~~ Race. In addition to any other valid ground or reason, a horse is ineligible to start any race if:

A. ~~Such~~ the horse is not registered by The Jockey Club if a Thoroughbred; the American Quarter Horse Association if a Quarter Horse; the Appaloosa Horse Club if an Appaloosa; the Arabian Horse Club Registry of America if an Arabian; the American Paint Horse Association if a Paint; the Pinto Horse Association of America, Inc., if a Pinto; or any successors to any of the foregoing or other registry recognized by the Commission~~[-]~~;

B. ~~The~~ Certificate of Foal Registration, eligibility papers, or other registration issued by the official registry for ~~such~~ the horse is not on file with the racing secretary one hour prior to post time for the race in which the horse is scheduled to race~~[-]~~;

C. ~~Such~~ the horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry~~[-]~~;

D. ~~The~~ Win Certificate, Certificate of Foal Registration, eligibility papers or other registration issued by the official registry has been materially altered, erased, removed, or forged~~[-]~~;

E. ~~Such~~ the horse is ineligible to enter ~~said~~ the race, is not duly entered for such race, or remains ineligible to time of starting~~[-]~~;

F. ~~The~~ trainer of ~~such~~ the horse has not completed the prescribed licensing procedures required by the Commission before entry and the ownership of ~~such~~ the horse has not completed the prescribed licensing procedures prior to the horse starting or the horse is in the care of an unlicensed trainer~~[-]~~;

G. ~~Such~~ the horse is owned in whole or in part or trained by any person who is suspended or ineligible for a license or ineligible to participate under the rules of any Turf Governing Authority or Stud Book Registry~~[-]~~;

H. ~~Such~~ the horse is a suspended horse~~[-]~~;

I. ~~Such~~ the horse is on the stewards' list, starter's list, or the veterinarian's list~~[-]~~;

J. ~~It~~ except with permission of the stewards and identifier, the identification markings of the horse do not agree with identification as set forth on the registration certificate to the extent that a correction is required from the appropriate breed registry~~[-]~~;

K. ~~A~~ a horse has not been lip tattooed by a Commission approved tattooer~~[-]~~;

L. ~~The~~ the entry of a horse is not in the name of his true owner~~[-]~~;

M. ~~The~~ the horse has drawn into the field or has started in a race on the same day~~[-]~~; or

N. ~~His~~the horse's age as determined by an examination of its teeth by the ~~an~~Official ~~and~~Veterinarian does not correspond to the age shown on its registration certificate, such determination by tooth examination to be made in accordance with the current "Official Guide for Determining the Age of the Horse" as adopted by the American Association of Equine Practitioners.

7. Horses Ineligible ~~To~~ Enter ~~or~~ Start. Any horse ineligible to be entered for a race or ineligible to start in any race ~~which~~that is entered or competes in such race, may be scratched or disqualified~~ed~~, and the stewards may discipline any person responsible.

8. Registration Certificate ~~To~~ Reflect Correct Ownership. ~~Every~~Each certificate of registration, eligibility certificate or lease agreement filed with the organization and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of such horse, and the name of the owner ~~which~~that is printed on the official program for such horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate. A stable name may be registered for ~~such~~the owner or ownership with the Commission. In the event ownership is by syndicate, corporation, partnership, or other association or entity, the name of the owner ~~which~~that is printed on the official program for such shall be the responsible managing owner, officer, or partner who assumes ~~all~~responsibilities as the owner.

9. Alteration ~~or~~ Forgery ~~of~~ Certificate ~~of~~ Registration. No person shall alter or forge any win sheet, certificate of registration, certificate of eligibility, or any other document of ownership or registration, nor willfully forge or alter the signature of any person required on any such document or entry card.

10. Declarations ~~and~~ Scratches. Any trainer or assistant trainer of a horse ~~which~~that has been entered in a race who does not wish such horse to participate in the draw ~~must~~shall declare his horse from the race prior to the close of entries. Any trainer or assistant trainer of a horse ~~which~~that has been drawn into or is also eligible for a race who does not wish such horse to start in the race, ~~must~~shall scratch his horse from the race prior to the designated scratch time. The declaration or scratch of a horse from a race is irrevocable.

11. Deadline ~~for~~ Arrival ~~of~~ Entered Horses. ~~All~~ ~~h~~Horses scheduled to compete in a race ~~must~~shall be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by their deadline may be scratched and the trainer subject to fine ~~and~~or suspension.

12. Refund ~~of~~ Fees. If a horse is declared or scratched from a race, the owner of ~~such~~the horse shall not be entitled to a refund of any nomination, sustaining and penalty payments, entry fees, or organization charges paid or remaining due at the time of the declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the owners of such horses that remain eligible at the time the race is declared off or canceled shall be entitled to a complete refund of ~~all~~the above payments and fees less monies specified in written race conditions for advertising and promotion.

13. Release ~~of~~ Certificates. Any certificate of registration or document of ownership filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record of the horse. However, the trainer may authorize in a form provided by the racing secretary the release of the certificate to the owner named on the certificate or his authorized agent. Any disputes concerning the rights to the registration certificates shall be decided by the stewards.

14. Nomination Races. Prior to the closing of nominations, the organization shall file with the Commission a copy of the nomination blank and ~~all~~any advertisements for races to be run during a race meeting. For ~~all~~racers ~~which~~that nominations close no earlier than

72 hours before post time, the organization shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of ~~all~~horses nominated and which remain eligible. The list shall be distributed within 15 days after the due date of each payment and shall include the horse's name, the owner's name, and the total amount of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and deduction for advertising and administrative expenses. The organization shall deposit ~~all~~monies for a nomination race in an escrow account according to procedures approved by the Commission.

15. Limitations ~~on~~ Field ~~and~~ Number ~~of~~ Races. No race with less than two horses entered and run, shall be approved by the ~~UHRC~~Commission. No more than 20 races may be run on a race day, except with permission of the Commission. A race day may be canceled if less than 75 horses have been entered on the day's program, with the exception of days on which trials or finals for a nomination race are scheduled.

16. Agreement Upon Entry. No entry shall be accepted in any race except upon the condition that ~~all~~any disputes, claims, and objections arising out of the racing or with respect to the interpretation of Commission and track rules or conditions of any race shall be decided by the Board of Stewards at the race meet~~ed~~, or, upon appeal, decided by the Commission.

17. Selection ~~of~~ Entered Horses. The manner of selecting post positions of horses shall be determined by the stewards. The selection shall be by lot and shall be made by one of the stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one race, the race may be split~~ed~~, or four horses not drawing into the field may be placed on an also eligible list.

18. Preferred List ~~of~~ Horses. The racing secretary may maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and ~~all~~rules governing ~~such~~the list shall be the responsibility of the Racing Secretary. Such rules ~~must~~shall be submitted to the Commission 30 days prior to the commencement of the meet and are subject to approval by the Commission.

#### **R52-7-8. Veterinarian Practices, Medication and Testing Procedures.**

1. Veterinarians ~~u~~Under the ~~a~~Authority of the Official Veterinarian. Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are under the authority of the Official Veterinarian and the ~~S~~stewards. The Official Veterinarian shall:

A. recommend to the ~~S~~stewards or the Commission, the discipline that may be imposed upon a veterinarian who violates the rules; and

B. sit with the ~~S~~stewards in any hearing before the ~~S~~stewards in any administrative process for discipline or violation against a veterinarian.

2. Physical ~~i~~Inspection and ~~a~~Assessment of ~~r~~Racing ~~e~~Condition. Any horse entered to participate in an official race shall be subjected to a veterinary inspection prior to starting in the race.

A. The inspection shall be conducted by the Official Veterinarian or the racing veterinarian.

B. The trainer of each horse or their representative ~~must~~shall present the horse for inspection as required by the examining veterinarian.

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C. Each horse presented for examination ~~[must]~~shall have clean legs, including removal of any bandages.

D. Prior to examination, a horse may not be placed in ice, nor shall any device or substance be applied that impedes veterinary clinical assessment.

E. The Official Veterinarian or the racing veterinarian shall maintain a permanent continuing health and racing soundness record of each horse inspected.

F. The Official Veterinarian or the racing veterinarian are authorized access to any horses housed on association grounds regardless of entry status.

G. The veterinarian will recommend to the [S]stewards the horse be scratched, if, prior to starting:

- [i]a. a horse is determined to be unfit for competition; or
- [ii]b. if the veterinarian is unable to make a determination of racing soundness.

H. Horses scratched upon the recommendation of the Official Veterinarian or the racing veterinarian are to be placed on a list maintained by the Official Veterinarian.

3. Appropriate [r]Role of [v]Veterinarians. The following limitations apply to drug treatments of horses that are engaged in activities, including training, related to competing in Utah Horse Racing Commission sanctioned race meets.

A. No drug may be administered except in the context of a valid relationship between an attending veterinarian, the horse owner, who may be represented by the trainer or other agent, and the horse. No drug or prescription drug may be administered without a veterinarian having examined the horse and provided the treatment recommendation. The relationship requires the following:

- [i]a. the veterinarian, with the consent of the owner, has accepted responsibility for making medical judgments about the health of the horse;
- [ii]b. after performing an examination, the veterinarian has:
  - [a-](1) sufficient knowledge of the horse to make a preliminary diagnosis of its medical condition;
  - [b-](2) is available, or has made arrangements to oversee treatment outcomes; and
  - [e-](3) maintains the veterinarian-client relationship, and;
  - [iii]c. the judgment of the veterinarian is independent and not dictated by the trainer or owner of the horse.

B. The trainer and veterinarian are both responsible to ensure compliance with these limitations on drug treatments of horses.

4. Treatment Restrictions. Only licensed trainers, licensed owners, or their designees shall be permitted to authorize veterinary medical treatment of horses under their care, custody, and control at locations under the jurisdiction of the Commission.

5. To administer a prescription or controlled medication, drug, chemical, or other substance, an individual ~~[must]~~shall be:

- A. licensed to practice veterinary medicine under the jurisdiction of the Commission; and
- B. licensed by the Commission.

C. Subsection ~~[(5)]~~five does not apply to the administration of an oral substance allowed by the Commission rules if the substance is not banned.

D. Subsection ~~[(5)]~~five does not apply to a recognized non-injectable nutritional supplement or other supplement approved by a licensed veterinarian or by the [e]Official [v]Veterinarian.

E. No individual shall possess a hypodermic needle, syringe capable of accepting a needle, or injectable of any kind on association grounds, unless otherwise approved by the Commission.

F. At any location under the jurisdiction of the Commission, a veterinarian may use only a one-time disposable syringe and needle and shall dispose of both in a manner approved by the Commission.

G. If an individual has a medical condition that makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that individual ~~[must]~~shall:

- [i]a. request permission of the Stewards and the Commission in writing;
- [ii]b. furnish a letter from a licensed physician explaining why it is necessary to have a syringe; and
- [iii]c. comply with any conditions and restrictions set by the [S]stewards and the Commission.

6. Veterinary [p]Practices. Private veterinarians shall not have contact with an entered horse 24 hours before the post time of the race in which the horse is scheduled to compete, unless licensed by the Commission and approved by the Official Veterinarian.

~~A.~~ Any unauthorized contact may result in the horse being scratched from the scheduled race and further disciplinary action by the [S]stewards.

~~[A]B.~~ Any horse entered for racing ~~[must]~~shall be present on the grounds ~~[five]~~four hours prior to the post time of the race they are entered in.

7. Veterinarians' [r]Reports. A private veterinarian who treats a racehorse at a facility under the jurisdiction of the Commission shall submit a Veterinarian's Medication Report Form approved by the Commission to the Official Veterinarian or other racing authority designee.

A. The Veterinarian's Medication Report Form shall be signed by the private veterinarian or, when signed electronically, shall be submitted by the private veterinarian.

B. The Veterinarian's Medication Report Form shall be filed by the treating veterinarian immediately following administration or prescription of any medication, drug, substance, or procedure.

C. Disclosure of any report is governed by ~~[the]~~Title 63G, Chapter 2~~[Utah Governmental]~~ Government Records Access and Management Act (GRAMA) and is non-public to the extent allowed by GRAMA. Access to a report is limited to the Official Veterinarian and the contents shall not be disclosed except:

- [i]a. in the course of an investigation of a possible violation of these rules;
- [ii]b. in a proceeding before the [S]stewards or the Commission exercising Commission authority; or
- [iii]c. to the horse trainer or owner of record at the time of treatment.

D. A timely and accurate filing of a Veterinarian's Medication Report Form that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent of a rules violation.

8. Pre-race and post-race testing and reporting to the test barn. The official winning horse and any other horse ordered by the Commission or the [S]stewards shall be taken to the test barn to have blood or urine samples taken at the direction of the Official Veterinarian.

A. The [S]stewards, Commission, or Official Veterinarian may require random testing on a horse at any time a horse is on the grounds under the jurisdiction of the Commission.

B. Unless otherwise directed by the [S]stewards or Official Veterinarian, a horse that is selected for testing ~~[must]~~shall be taken directly to the test barn. An individual approved by the Commission or a track security guard shall monitor access to the test barn area



during and immediately following each racing performance. Any individual entering the test barn area ~~must~~shall:

- [i]a. be at least 18 years old;
- [ii]b. be currently licensed by the Commission;
- [iii]c. display their Commission identification badge; and
- [iv]d. have a legitimate reason for being in the test barn area.

C. Sample collection shall be done in accordance with the guidelines and instructions provided by the Official Veterinarian, including the determination of a minimum sample requirement for the primary testing laboratory.

[i]a. If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory.

[ii]b. If a specimen obtained from a horse is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

[iii]c. If a specimen obtained from a horse is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

[iv]d. Blood samples ~~must~~shall be collected at a consistent time, preferably not later than one-hour post-race.

9. Pre-race [s]Sampling or [t]Testing. The Commission shall adopt standard operating procedures that include:

- A. sampling procedures; and
- B. personnel and notification processes.

10. If a sample taken pre-race is determined to be above the thresholds stated in this rule, the horse shall be scratched.

11. Any owner, trainer, or other licensed designee of the owner or trainer who fails to permit a horse to be tested when requested by an authorized Commission designee shall have that horse scratched.

12. Out-of-competition [t]Testing [a]Authorized. The Commission may take blood, urine, hair, or other biologic samples from a horse at a reasonable time on any date as authorized by Commission rules

13. The Commission [s]Shall own the [s]Samples. This rule authorizes only the collection and testing of samples, and does not independently make impermissible the administration to or presence in any horse of any drug or other substance. A race day prohibition or restriction of a substance by a Commission rule is not applicable to an out of competition test unless there is an attempt to race the horse in a manner that violates the rule.

14. Horses [e]Eligible to be [t]Tested. Any horse that has been engaging in activities related to competing in horse racing in the jurisdiction may be tested. This includes:

A. horses that are training outside the jurisdiction to participate in racing in the jurisdiction; and

B. horses that are training in the jurisdiction.

[C]15. Weanlings, yearlings, and horses no longer engaged in horse racing, such as retired broodmares are not eligible to be tested.

[D]16. A horse is presumed eligible for out-of-competition testing if:

[i]A. it is on the grounds at a racetrack or training center under the jurisdiction of the Commission;

[ii]B. it is under the care or control of a trainer licensed by the Commission;

[iii]C. it is owned by an owner licensed by the Commission;

[iv]D. it is entered or nominated to race at a premise licensed by the Commission;

[v]E. it has raced within the previous 12 months at a premise licensed by the Commission; or

[vi]F. it is nominated to a program based on racing in the jurisdiction.

1[5]7. Horses shall be selected for sampling by a Commission veterinarian, Executive Director, Equine Medical Director, Steward, Presiding Judge, or a designee of any of the foregoing.

1[6]8. Horses may be selected to be tested at random, for cause, or as otherwise determined, at the discretion of the Commission, and the Commission need not provide advance notice before arriving at any location, whether or not licensed by the Commission, to collect samples.

1[7]9. The trainer, owner, or their designee shall cooperate with the person who takes samples for the Commission, and shall:

A. assist in the immediate location and identification of the horse; and

B. make the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples.

[+8]20. A trainer or owner of a horse that has been notified that a written report from a primary laboratory states that a prohibited substance was found in a specimen obtained under these rules, may request that a split sample, corresponding to the portion of the specimen tested by the primary laboratory, be sent to another laboratory approved by the Commission.

A. The request must be made in writing and delivered to the Stewards not later than three business days after the [S]stewards receive written notice of the findings of the primary laboratory. Any split sample requested ~~must~~shall be shipped within an additional 48 hours. The owner or trainer requesting testing of a split sample shall be responsible for the cost of shipping and testing.

B. Failure of the owner, trainer or designee to appear at the time and place designated by the Official Veterinarian shall constitute a waiver of rights to split sample testing.

C. Prior to shipment, the Commission shall confirm the split sample laboratory's willingness to simultaneously:

[i]a. provide the testing requested;

[ii]b. send results to both the person requesting the testing and the Commission, and;

[iii]c. make arrangements for payment satisfactory to the split sample laboratory.

D. If a reference laboratory will accept split samples, that laboratory ~~must~~shall be included among the laboratories approved for split sample testing.

[+9]21. Storage and [s]Shipment of [s]Split [s]Samples. Split samples obtained in accordance with this rule shall be secured and available for further testing in accordance with the following procedures.

A. A split sample shall be secured in the test barn in the same manner as the portion of the specimen shipped to a primary laboratory until specimens are packed and secured for shipment to the primary laboratory. Any evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to the Official Veterinarian or a designated Commission representative.

B. Split samples shall then be transferred to a freezer at a secure location approved by the Commission that ~~must~~shall meet the following requirements:

[i]a. the freezer shall have two hasps or other devices providing for use of two independent locks;

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[#]b. one lock shall be the property of the Commission; and

[##]c. one lock shall be the property of a representative of the group representing a majority of the horsemen at a race meeting.

C. The locks shall be closed and locked to prevent access, except as provided by these rules.

D. A freezer for storage of split samples shall only be opened under the following circumstances:

[i]a. to deposit or remove split samples; or

[ii]b. to inventory, or check the condition of samples.

E. When a freezer used for storage of split samples is opened, it shall be attended by both a representative of the Commission and the owner or trainer of the horse, or their designee.

F. A chain of custody log shall be maintained and shall record each time a split sample freezer is opened to:

[i]a. specify each person in attendance;

[ii]b. specify the purpose for opening the freezer;

[iii]c. identify split samples deposited or removed;

[iv]d. specify the date and time the freezer was opened, the time the freezer was closed; and

[v]e. verify that both locks were secured prior to and after opening the freezer.

[F]G. The Commission shall also provide a Split Sample Chain of Custody Verification Form. The form, including any additional information the Official Veterinarian may require, shall be completed during the retrieval, packaging, and shipment of the split sample, specifying:

[i]a. the date and time the sample is removed from the split sample freezer;

[ii]b. the sample number;

[iii]c. the address where the split sample is to be sent;

[iv]d. the name of the carrier and the address where the sample is to be taken for shipment;

[v]e. verification of retrieval of the split sample from the freezer including packaging;

[vi]f. verification of the address of the laboratory on the sample package;

[vii]g. verification of the condition of the sample package immediately prior to transfer of custody to the carrier; and

[viii]h. the date and time custody of the sample is transferred to the carrier.

2[0]2. The owner, trainer, or designee shall pack the split sample for shipment in the presence of a representative of the Commission, in accordance with the packaging procedures recommended by the Commission.

2[+]3. Laboratory [##]Minimum [s]Standards. Laboratories conducting either primary or split post-race sample analysis [must]shall meet at least the following minimum standards.

A. The laboratory must be accredited by an accrediting body designated by the Association of Racing Commissioners International to standards set forth and required by the Commission

B. A testing laboratory must:

[i]a. have, or have access to, LC/MS instrumentation for screening or confirmation purposes; and

[ii]b. be able to meet minimum standards of detection, which are defined as:

[iii]c. the specific concentration at which a laboratory is expected to detect the presence of a particular substance or metabolite; or

[iv]d. by the adoption of a regulatory threshold.

2[2]4. Postmortem [e]Examinations.

\_\_\_\_\_A. The Commission may require a postmortem examination of any horse that dies or is euthanized on association grounds.

[A]B. If a postmortem examination is to be conducted, the Commission or its representative shall take possession of the horse upon death for postmortem examination.

[i]C. [A#][s]Shoes and equipment on the horse's legs shall be left on the horse.

[B]D. If a postmortem examination is to be conducted, the Commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanasia.

[i]E. The Commission may submit blood, urine, bodily fluids, or other biologic specimens collected during a postmortem examination for analysis.

[C]F. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.

[D]G. [A#]Licensées shall be required to comply with postmortem examination requirements as a condition of licensure.

[E]H. In proceeding with a postmortem examination, the Commission or its designee shall coordinate with the owner or the owner's agent to determine and address any insurance requirements.

[F]I. The owner of the deceased horse shall make payment of any charges due the Official Veterinarian or a licensed veterinarian employed to conduct the postmortem examination.

[G]J. If any licensed veterinarian other than the Official Veterinarian or his designee performs a postmortem examination, the veterinarian shall submit the record of the postmortem examination to the Official Veterinarian within 72 hours of the examination.

**R52-7-9. Running the Race.**

1. Jockeys [F]to Report. [Every]Each jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the jockey room until [all of]their riding engagements have been fulfilled [and]or unless excused by the stewards.

2. Entrance [F]to Jockey Room Prohibited. Except with permission of the stewards or the Commission, no person shall be permitted entrance into the jockey room from one hour before post time for the first race until after the last race other than jockeys, their attendants, racing officials and security officers on duty, and organization employees performing required duties.

3. Weighing Out. [All]Each jockey[s] taking part in a race [must]shall be weighed out by the Clerk of Scales no more than one hour preceding the time designated for the race. Any overweight in excess of one pound shall be declared by the jockey to the Clerk of Scales, who shall report such overweight and any change in jockeys to the [S]stewards for immediate public announcement. A jockey's weight includes the riding costume, racing saddle and pad; but shall not include the jockey's safety helmet, whip, the horse's bridle or other regularly approved racing tack. A jockey [must]shall be neat in appearance and [must]shall wear a conventional riding costume.

4. Unruly Horses [H]in [F]the Paddock. If a horse is so unruly in the saddling paddock that the identifier cannot read the tattoo number and properly identify the horse; or if the trainer or their assistant is uncooperative in the effort to identify the horse, then the horse may be scratched by order of the stewards.

5. Use [O]f Equipment. No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound or be more

than 31 inches in length. No whip shall be used unless it shall have affixed to the end thereof a leather "popper." ~~All w~~Whips are subject to inspection and approval by the stewards. Blinkers are not to be placed on the horse until after the horse has been identified by the official identifier, except with permission of the stewards.

6. Prohibited Use ~~of~~ Equipment. Jockeys are prohibited from whipping a horse excessively, brutally, or upon the head, except when necessary to control the horse. No mechanical or electrical devices or appliances other than the ordinary whip shall be possessed by any individual or used on any horse at any time a race meeting, whether in a race or otherwise.

7. Responsibility ~~for~~ Weight. The jockey, trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

8. Safety Equipment Required. ~~All~~Each person[s], when mounted on a race horse within the enclosure or riding in a race, shall wear a properly fastened safety helmet and flak jacket. The Commission or the stewards may require any other person to wear such helmet and jacket when mounted on a horse within the enclosure. ~~All~~S[s]afety helmets and flak jackets ~~so~~required are subject to approval of the stewards or Commission.

9. Display ~~of~~ Colors ~~A~~and Post Position Numbers. In a race, each horse shall carry a conspicuous saddle cloth number, and the jockey shall wear racing colors consisting of long sleeves and a numbered helmet cover corresponding to the number of the horse ~~which~~that are furnished by the organization licensee.

10. Deposit ~~of~~ Jockey Fee. The minimum jockey mount fee for a losing mount in the race ~~must~~shall be on deposit with the horsemen's bookkeeper, prior to the time for weighing out, and failure to have ~~such~~a minimum fee on deposit is cause for disciplinary action and cause for the stewards to scratch the horse for which ~~such~~the fee is to be deposited. The organization assumes the obligation to pay the jockey fee when earned by the engaged jockey. The jockey fee shall be considered earned when the jockey is weighed out by the clerk of scales, unless, in the opinion of the stewards, such jockey capable of riding elect to take themselves off the mount without proper cause.

11. Requirements ~~for~~ Horse, Trainer, And Jockey. ~~Every~~Each horse ~~must~~shall be in the paddock at the time appointed by the stewards before post time for their race. ~~Every~~Each horse ~~must~~shall be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give ~~such~~instructions as may be necessary to assure the best performance of the horse. ~~Every~~Each jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

12. Failure ~~to~~ Fulfill Jockey Engagements. No jockey engaged for a certain race or for a specified time may fail or refuse to abide by ~~his or her~~their agreement unless excused by the stewards.

13. Control ~~A~~and Parade ~~of~~ Horses ~~on~~ ~~the~~ Track. The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. ~~All~~Horses with jockey mounted shall parade and warm up carrying their weight and wearing their equipment from the paddock to the starting gate, as well as to the finish line. Any horse failing to do so may be scratched by the stewards. After passing the stands at least once, the horses may break formation and warm up until directed to proceed to the starting gate. In the event a jockey is injured during the parade to post or at the starting gate and must be replaced, the horse shall be returned to the paddock

and resaddled with the replacement jockey's equipment. ~~Such~~The horse ~~must~~shall carry the replacement jockey to the starting gate.

14. Start ~~of~~ The Race. When the horses have reached the starting gate, they shall be placed in their starting gate stalls in the order stipulated by the starter. Except in cases of emergency, ~~every~~each horse shall be started by the starter from a starting gate approved by the Commission. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards. If, when the starter dispatches the field, the doors at the front of the starting gate stall should not open properly due to a mechanical failure of malfunction of the starting gate, the stewards may declare ~~such~~the horse to be a nonstarter. Should a horse ~~which~~that is not previously scratched not be in the starting gate stall, ~~thereby~~causing ~~such~~the horse to be left when the field is dispatched by the starter, ~~such~~the horse shall be declared a nonstarter by the stewards.

15. Leaving ~~the~~ Race Course. Should a horse leave the course while moving from the paddock to starting gate, he shall return to the course at the nearest practical point to that at which he left the course, and shall complete his parade to the starting gate from the point at which he left the course. However, should ~~such~~the horse leave the course to the extent that he is out of the direct line of sight of the stewards, or if ~~such~~the horse cannot be returned to the course within a reasonable amount of time, the stewards shall scratch the horse. Any horse ~~which~~that leaves the course or loses its jockey during the running of a race shall be disqualified and may be placed last, or the horse may be unplaced.

16. Riding Rules. In a straightaway race, ~~every~~each horse ~~must~~shall maintain position as nearly as possible in the lane in which he starts. If a horse is ridden, drifts, or swerves out of their lane in ~~such~~a manner that he interferes with or impedes another horse, it is a foul. ~~Every~~Each jockey shall be responsible for making ~~his~~their best effort to control and guide ~~his~~their mount in ~~such~~a way as not to cause a foul. The stewards shall take cognizance of riding ~~which~~that results in a foul, irrespective of whether an objection is lodged ~~and~~. ~~If~~ If in the opinion of the stewards, a foul is committed as a result of a jockey not making his best effort to control and guide their mount to avoid a foul, whether intentionally or through carelessness or incompetence, ~~such~~the jockey may be penalized at the discretion of the stewards.

17. Stewards ~~to~~ ~~D~~determine Fouls ~~A~~and Extent ~~of~~ Disqualification. The stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind ~~such~~other horses as in their judgment it interfered with, or they may place it last. The stewards may determine that a horse shall be unplaced.

18. Careless Riding. A jockey shall not ride carelessly or willfully so as to permit ~~his or her~~their mount to interfere with or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified ~~and~~or the jockey may be fined ~~and~~or suspended, or otherwise disciplined.

19. Ramifications ~~of~~ ~~A~~a Disqualification. When a horse is disqualified by the stewards, ~~every~~each horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or a more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

20. Dead Heat. When a race results in a dead heat, the heat shall not be run off. The purse distribution due the horses involved in

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the dead heat shall be divided equally between them. ~~All~~ Prizes or trophies for which a duplicate is not awardable shall be drawn for by lot.

21. Returning ~~to~~ the Finish After ~~the~~ Race. After the race, the jockey shall return their horse to the finish and before dismounting, salute the stewards. No person shall assist a jockey in removing from their horse the equipment that is to be included in the jockey's weight except by permission of the stewards. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his weight.

22. Objection - Inquiry Concerning Interference. Before the race has been declared official, a jockey, trainer or their assistant trainer, owner or their authorized agent of the horse, who has reasonable grounds to believe that their horse was interfered with or impeded or otherwise hindered during the running of a race, or that any riding rule was violated by any jockey or horse during the running of the race, may immediately make a claim of interference or foul with the stewards or their delegate. The stewards shall thereupon hold an inquiry into the running of the race; however, ~~the stewards~~ may, upon their own motion, conduct an inquiry into the running of a race. Any claim of foul, objection, ~~and~~ or inquiry shall be immediately announced to the public.

23. Official Order ~~of~~ Finish. When satisfied that the order of finish is correct, that ~~all~~ each jockey[s] unless excused have been properly weighed in, and that the race has been properly run, in accordance with the rules of the Commission, the ~~S~~ stewards shall declare that the order of finish is official~~s~~, and it shall be announced to the public, confirmed, and the official order of finish posted for the race.

24. Time Trial Qualifiers. When two or more time trial contestants have the same qualifying time, to a degree of .001 of a second, or a more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for ~~all~~ contestants, then a draw by lot will be conducted in accordance with Subsection R52-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant ~~which~~ that out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until ~~all~~ trial heats are complete, except in an emergency as determined by the stewards.

### R52-7-10. Objections and Protests; Hearing and Appeals.

1. Stewards ~~to~~ Make Inquiry ~~or~~ Investigation. The stewards shall make diligent inquiry or investigation into any complaint, objection, or protest made either upon their own motion, by any ~~R~~ racing ~~or~~ official, or by any other person empowered by this ~~Article~~ rule to make such complaint, protest, or objection.

2. Objections. Objections to the participation of a horse entered in any race shall be made to the stewards in writing and signed by the objector. Except for claim of foul or interference, an objection to a horse entered in a race shall be made not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered. Any ~~such~~ objection shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards, upon their own motion, may consider an objection until such time as the horse becomes a starter. An objection concerning claim of foul in a race may be lodged verbally to the stewards before the race results are declared official.

3. Grounds ~~for~~ Objections. An objection to a horse ~~which~~ that is entered in a race shall be made on the following grounds or reasons:

A. ~~A~~ a misstatement, error or omission in the entry under which a horse is to run~~s~~;

B. ~~That~~ the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given~~s~~;

C. ~~That~~ the horse is not qualified to enter under the conditions specified for the race, ~~or~~ that the allowances are improperly claimed or not entitled the horse, or that the weight to be carried is incorrect under the conditions of the race~~s~~;

D. ~~That~~ the horse is owned in whole or in part, or leased by a person ineligible to participate in racing or otherwise ineligible to run a race as provided in these ~~R~~ rules~~s~~; or

E. ~~F~~ that reasonable grounds exist whereby a horse was interfered with or impeded or otherwise hindered by another horse or jockey during the running of a race.

4. Horse Subject ~~to~~ Objection. The stewards may scratch from the race any horse ~~which~~ that is the subject of an objection if they have reasonable cause to believe that the objection is valid.

5. Protests. A protest against any horse ~~which~~ that has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R52-7-10(8). Any ~~such~~ protest shall set forth the specific ~~reason or~~ reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

6. Grounds ~~for~~ Protest. A protest may be made upon the following grounds:

A. ~~A~~ any ground for objection set forth in Subsection R52-1-10(3)~~s~~;

B. ~~F~~ that the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers designated to the horses ~~which~~ that started in the race~~s~~;

C. ~~F~~ that a jockey, trainer, or owner of a horse ~~which~~ that started in the race was ineligible to participate in racing as provided in these rules~~s~~;

D. ~~F~~ that the weight carried by a horse was improper by reason of fraud or willful misconduct~~s~~; or

E. ~~F~~ that an unfair advantage was gained in violation of the rules.

7. Persons Empowered ~~to~~ File Objection ~~or~~ Protest. A jockey, trainer, owner or authorized agent of the horse ~~which~~ that is entered or is a starter in a race is empowered to file an objection or protest against any other horse in ~~such~~ the race upon the grounds set forth in this ~~Article~~ rule for objections and protests.

8. No Limitation ~~on~~ Time ~~to~~ File When Fraud Alleged. Notwithstanding any other provision in this ~~Article~~ rule, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged, provided that the stewards are satisfied that the allegations are bona fide and susceptible to verification.

9. Frivolous ~~or~~ Inaccurate Objection ~~or~~ Protest. No person shall knowingly file a frivolous, inaccurate, false, or untruthful objection or protest; nor shall any person present ~~his~~ their objection or protest to the stewards in a disrespectful or undignified manner.

10. Horse ~~to~~ ~~be~~ ~~dis~~ disqualified ~~on~~ Valid Protest. If a protest against a horse ~~which~~ that has run in a race is declared valid, that horse may be disqualified. A horse so disqualified which was a starter in the said race, may be placed last in the order of finish or may be unplaced. The stewards or the Commission may order any purse, award or prize for any race withheld from distribution pending the determination of the protest~~s~~. In the event any purse, award or prize has been distributed to a person on behalf of a horse ~~which~~ that by protest or other reason is disqualified or determined not to be entitled to ~~such~~ the purse, award or prize, the stewards or the Commission may order ~~such~~ the purse, award or prize returned and redistributed to the

rightful person. Any person who fails to comply with an order to return any purse, award, or prize previously distributed shall be suspended until its return.

11. Notification ~~[O]~~of ~~[A]~~and Representation ~~[A]~~at Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R52-7-3(6). ~~[Every]~~Each person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on ~~[his]~~their behalf and to cross-examine other witnesses at the hearing.

12. Testimony ~~[A]~~and Evidence ~~[A]~~at Hearing. ~~[Every]~~Each person called to a hearing before the stewards for a rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.

13. Duty ~~[O]~~of Disclosure. It is the duty and obligation of ~~[every]~~each licensee to make full disclosure at a hearing before the Commission or before the stewards of any knowledge ~~[he or she possesses]~~they possess of a violation of any racing law or of the rules of the Commission. No person may refuse to testify at any hearing on any relevant matter except in the proper exercise of a legal privilege, nor shall any person testify falsely.

14. Failure ~~[T]~~to Appear. Any licensee or summoned person who fails to appear before the stewards or the Commission after they have been ordered personally or in writing to do so, may be suspended pending appearance before the stewards or the Commission. Nonappearance of a summoned person after adequate notice may be construed as a waiver of right to be present at a hearing.

15. Record ~~[O]~~of Hearing. ~~[All]~~hearings before the stewards or Commission shall be recorded. Th~~[at]~~e portion ~~[at]~~of a hearing ~~[constituting]~~that includes deliberations in executive session need not be recorded. A written transcript or a copy of the tape recording shall be made available to any person alleged to have committed a violation of the Act or the rules upon written request and payment of appropriate reimbursement cost~~(s)~~ for transcription or reproduction.

16. Vote ~~[O]~~on Steward's Decision. A majority vote shall decide any question to which the authority of the stewards extends. If a vote is not unanimous, the dissent steward shall provide a written record to the Commission of the reasons for such dissent within 72 hours of the vote.

17. Rulings ~~[B]~~by The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order~~(s)~~, most recent address on file with the Commission~~(s)~~, date of birth~~(s)~~, social security number~~(s)~~, statement of the offense charged including any rule number; date of ruling; fine ~~[and]~~or suspension imposed or other action taken~~(s)~~, changes in the order of finish and purse distribution in a race, when appropriate~~(s)~~, and any other information deemed necessary by the stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other stewards, issue an Order or Notice signed by one steward on behalf of the Board of Stewards. Subsequently, an Order containing all three stewards' signatures shall be made part of the official record.

18. Summary Suspension ~~[O]~~of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates ~~[such]~~a finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in Subsection R52-7-10(19).

19. Duration ~~[O]~~of Suspension ~~[O]~~or Revocation. Unless execution of an order of suspension or revocation is stayed by the

Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R52-7-5.

20. Grounds ~~[F]~~for Appeal From Decision ~~[O]~~of The Stewards. Any decision of the stewards, except decisions regarding disqualifications for interference during the running of a race, may be appealed to the Commission~~(s)~~. ~~[and]~~Such decision may be overruled if it is found by a preponderance of evidence that:

A. ~~[T]~~the stewards mistakenly interpreted the law; or  
B. ~~[T]~~the Appellant produces new evidence of a convincing nature ~~[which]~~that, if found to be true, would require the overruling of the decision; or

C. ~~[T]~~the best interests of racing and the ~~[S]~~state may be better served.

21. Appeal ~~[F]~~from Decision ~~[O]~~of The Stewards. The Commission shall review hearings of any case referred to the Commission by the stewards or appealed to the Commission from the decisions of the stewards except as otherwise provided in this ~~[Article]~~rule. Upon every appealable decision of the stewards, the person subject to the decision or Order shall be made aware of his right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 72 hours or the third calendar day from the date of the rendering of the decision of the stewards unless the Commission ~~[for good cause]~~extends the time for filing for good cause. Any extension should not ~~[to]~~exceed 30 days from ~~[said]~~the rendering date. The appeal shall be in writing, signed by the appellant~~(s)~~, and shall contain his full name, present mailing address, and present phone number; and shall set forth the facts and any new evidence the appellant believes to be grounds for an appeal before the Commission. Action on such a hearing request must commence by the Commission within 30 days of the filing of the appeal. An appeal shall not affect a decision of the stewards until the appeal has been sustained or dismissed or a stay order issued.

22. Appointment ~~[O]~~of Hearing Examiners. When directed by the Commission, any qualified person~~(s)~~ may sit as a hearing examiner~~(s)~~ for the taking of evidence in any matter pending before the Commission. Any such hearing examiner shall report to the Commission Findings of Fact and Conclusions of Law, and the Commission shall determine the matter as if ~~[such]~~the evidence had been presented to the full Commission.

23. Hearings ~~[O]~~on Agreement. Persons aggrieved as of the result of a stewards' ruling in a preliminary or trial race may request a hearing before the executive director of the Commission to review ~~[same]~~the ruling. If ~~[all]~~interested parties waive the right to receive ten day notice of hearing, such a hearing may be heard on a day certain within seven days after the preliminary or trial race in question. ~~[All such]~~Any appeals shall be heard on days set by the executive director of the Commission or anyone acting in ~~[his]~~their stead.

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the Commission as specified in Subsection R52-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further order of the executive

## NOTICES OF PROPOSED RULES

director upon consultation with and the direction of a minimum of three Commissioners.

25. Appearance ~~[A]~~at Hearing Upon Appeal. The Commission shall notify the Appellant and the stewards of the date, time, and location of its hearing in the matter upon appeal. The burden shall be on the appellant to provide the facts necessary to sustain the appeal.

26. Complaints Against Officials. Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. ~~[All such]~~Any complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. Complaints against any stewards shall be made in writing to the executive director of the Commission and signed by the complainant.

27. Rulings ~~[O]~~on Admissibility ~~[A]~~and Evidence. In ~~[all]~~hearings, the chairperson, chief steward, or ~~[such]~~other person as may be designated, shall make rulings on admissibility and introduction of evidence. ~~[Such a]~~A ruling shall prevail~~[:]~~, except when a Commission member or a steward requests a poll of the panel, and the ruling ~~is~~ overturned by majority vote.

### **R52-7-11. General Conduct.**

1. Conditions ~~[O]~~of Meeting Binding Upon Licensees. The Commission, recognizing the necessity for an organization to comply with the requirements of its license and to fulfill its obligation to the public and the State of Utah with the best possible uninterrupted services in the comparatively short licensed period, herein provides that ~~[all]~~organizations, officials, horsemen, owners, trainers, jockeys, grooms, farriers, organization employees, and ~~[all]~~licensees who have accepted, directly or indirectly, with reasonable advance notice, the conditions defined by these rules under which ~~[said]~~an organization engages and plans to conduct such race meeting, shall be bound thereby.

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the ~~[same]~~drug was administered by or with the knowledge of the trainer or ~~[person or]~~persons under his supervision having care or custody of ~~[such]~~the horse. At the discretion of the stewards or Commission, the trainer and ~~[all]~~any other persons shown to have had care or custody of ~~[such]~~the horse may be fined or suspended or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the ~~[e]~~Official ~~[v]~~Veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. ~~[Such a]~~Designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere ~~[therewith]~~shall be cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

3. Altering Sex ~~[O]~~of Horse. Any alteration to the sex of a horse from the sex as recorded on the Certificate of Foal Registration or other official registration Certificate of such horse shall be immediately reported by the trainer to the racing secretary and the official horse identifier if ~~[such]~~the horse is registered to race at any race meeting.

4. Official Workouts ~~[And]~~and Schooling Races. No trainer shall permit a horse in his charge to be taken on to the track for training or a workout except during hours designated by the organization. A trainer desiring to engage a horse in a workout or schooling race shall, prior to such workout or race, identify the horse by registered name and tattoo number when requested to do so by the stewards or their authorized representative.

5. Intoxication. No licensee, employee of the organization or its concessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any controlled dangerous substance, or under the influence of any narcotic or other drug while within the enclosure. No person shall in any manner or at any time disturb the peace or make themselves obnoxious on the enclosure of an organization.

6. Firearms. No person shall possess any firearm within the enclosure unless he is a fully qualified peace officer as defined in the laws of the State of Utah, or is acting in accordance with Title 53, Chapter 5, Part 7, Concealed Weapons Act and Title 76, chapter 10, Part 5~~[-Utah Code]~~. A person carrying a concealed weapon may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

7. Financial Responsibility. No licensee shall willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with his operations as a licensee~~[:]~~, nor shall he falsely deny any ~~[such]~~amount due or the validity of the complaint ~~[thereof]~~with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. A ~~[e]~~Commission authorized license may be suspended pending settlement of the financial obligation. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

8. Checks. No licensee shall write, issue, make, or present a bad check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies. The fact that ~~[such]~~a check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

9. Gratuity ~~[T]~~to Starter ~~[O]~~or Assistant Starter. No person shall offer or give money or other gratuity to any starter or assistant starter, nor shall any starter or assistant starter receive money or other compensation, gratuity or reward, in connection with the running of any race or races except compensation received from an organization for official duties.

10. Possession ~~[O]~~of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R52-7-8(1). No person shall have in ~~[his or her]~~their possession within the enclosure during any recognized meeting any device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

11. Bribes. No person shall give, or offer or promise to give, or attempt to give or offer any money, bribe, or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding, or agreement that ~~[such]~~the owner, trainer, jockey, agent or other person shall not use his best efforts to win a race or so conduct himself in ~~[such]~~a race that any other participant in ~~[such]~~a race shall be assisted or enabled to win ~~[such]~~a race; nor shall any trainer, jockey, owner, agent, or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe, or thing of value with the intention, understanding, or agreement that ~~[he]~~they will not use ~~[his]~~their best efforts to win a race or to so conduct ~~[himself]~~themselves so that any other horse or horses entered in ~~[such]~~a race shall ~~[thereby]~~be assisted or enabled to win ~~[such]~~the race.

12. Trainer's Duty ~~[F]~~to Ensure Licensed Participation. No trainer shall have in his custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse owner by the Commission unless ~~[such]~~the owner has filed an application for license as a horse owner with the Commission and the same is pending before the Commission; nor shall any trainer have in his employ within the enclosure any groom, stable employee, stable agent, or other person required to be licensed, unless such person has a valid license. ~~[A]~~Any changes of commissioned licensed personnel shall be reported immediately to the Commission.

13. Conduct Detrimental ~~[F]~~to Horse Racing. No licensee shall engage in any conduct prohibited by law and by the rules of the Commission, nor shall any licensee engage in any conduct which by its nature is unsportsmanlike or detrimental to the best interest of horse racing.

14. Denial ~~[O]~~of Access ~~[F]~~to Private Property. Nothing contained in these rules shall be deemed, expressly or implicitly, to prevent an organization from exercising the right to deny access to or to remove any person from the organization's premises or property for just cause.

15. Tricks~~[/]~~ or Schemes. No person shall falsify, conceal, or cover up by trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing ~~[the same to]~~they contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying, selling, or racing of ~~[such]~~the animal.

16. Prearranging ~~[F]~~the Outcome ~~[O]~~of ~~[A]~~a Race. No licensed or unlicensed person may attempt or conspire to prearrange the outcome of a race.

#### **R52-7-12. Fire Prevention and Security.**

1. Security Control. ~~[Every]~~Each organization conducting a race meeting shall maintain security controls over its premises, and ~~[such]~~security controls are subject to the approval of the Commission.

2. Identification Required. No person shall be admitted to a restricted area within the enclosure without a license, visitor's pass, or other identification issued by the Commission or the organization on his person. Whenever deemed advisable, the stewards or the organization may require the visible display of the identification as a badge. No person shall use the license or credential issued to another, nor shall any person give or loan his license or credential to any other person.

3. Organization Credentials. The racing organization shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its meeting are licensed as required by this Article; provided, however, that no ~~[such]~~system or methods may exclude any investigator or employee

of the Commission or any peace officer when on duty; nor shall any person be excluded solely on the basis of sex, color, creed, or national origin or ancestry.

4. Organization ~~[F]~~to Prevent Unauthorized Access ~~[F]~~to Restricted Areas. Unless granted exemption by the Commission, ~~[every]~~each organization shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in ~~[such]~~the restricted area is unauthorized. Nothing herein shall be construed to exclude members of the Commission and any staff members of the Commission in the conduct of official duties.

5. Examination ~~[O]~~of Personal Effects. The Commission, its authorized officers or agents may enter the stables, rooms, or other places within the premises of a recognized meeting to inspect and examine the personal effects and property of any licensee or other person in or about or permitted access to any restricted area; and each licensee in accepting his license, and each person entering such restricted area, does thereby consent thereto.

6. Obedience ~~[F]~~to Security Officers ~~[A]~~and Public Safety Officers. No licensee shall willfully ignore or refuse to obey any order issued by the stewards; the Commission; ~~[or]~~any security officer of the organization; ~~[or]~~any public officer of any police, fire, or law enforcement agency when ~~[such]~~an order is issued or given in the performance of duty for the purpose of controlling any hazardous situation or occurrence. No person shall interfere with public safety officers, security officers, or any racing official in the performance of their duties.

#### **R52-7-13. Prohibited Practices.**

1. No person may possess or use a drug, substance, or medication on the premises of a facility under the jurisdiction of the Commission if:

- A. a recognized analytical method has not been developed to detect and confirm the administration of the substance;
- B. the use of the substance may endanger the health or welfare of the horse or endanger the safety of the rider;
- C. the use of the substance may adversely affect the integrity of racing; or
- D. no generally accepted use of the substance in equine care exists.

2. Prohibited ~~[s]~~Substances and ~~[m]~~Methods. The Commission incorporates by reference, a list of prohibited substances and methods of administration contained in the following matrices maintained by the department: ~~[Annex I.]~~Prohibited Substances~~[,]~~ and Controlled Therapeutic ~~[.]~~Medication Schedule for Horses.

A. The substances and methods listed in the Prohibited List may not be used, and may not be possessed on the premises of a racing or training facility under the jurisdiction of the Commission, except as a restricted therapeutic use.

B. The equipment and supplies necessary for official testing, shall be provided by the organization.

3. Restricted ~~[t]~~Therapeutic ~~[u]~~Use. A limited number of medications on the Prohibited List may be exempted when administration occurs in compliance with required conditions for restricted therapeutic use~~[.]~~ found in the Utah Horse Racing Commission Controlled Therapeutic Medication Schedule for Horses incorporated by reference and maintained by the department. ~~[The use of the substance must comply with the rules of the Commission.]~~

4. The possession or use of the following substances or of blood doping agents, including those listed below, on the premises of a facility under the jurisdiction of the Commission is forbidden:

NOTICES OF PROPOSED RULES

- A. Aminoimidazole carboxamide ribonucleotide (AICAR);
- B. Darbepoetin;
- C. Equine Growth Hormone;
- D. Erythropoietin;
- E. Hemopure, registered trademark;
- F. Myo-Inositol Trispyrophosphate (ITPP);
- G. Oxyglobin, registered trademark;
- H. Thymosin beta;
- I. Venoms or its derivatives; or
- J. Thymosin beta.

5. Other [p]Prohibited [s]Substances. Substances in the categories below shall be strictly prohibited unless otherwise provided in accordance with state law or Commission rule including:

A. a pharmacologic substance that is not approved by any governmental regulatory health authority for human or veterinary use within the jurisdiction, including:

- [i]a. a drug under pre-clinical or clinical development;
- [ii]b. a discontinued drug; or
- [iii]c. a designer drug.

[a-](1) A designer drug is a synthetic analog of a drug that has been altered in a manner that may reduce its detection.

[b-](2) Designer drugs do not include:

- I. vitamins, herbs, and supplements used for nutritional purposes that do not contain any other prohibited substance; or
- II. the administration of a substance with the prior approval of the Commission in a clinical trial for which an FDA or similar exemption has been obtained;

B. anabolic agents and Anabolic Androgenic Steroids (AAS);

C. peptide hormones, growth factors, and related substances including any substance with similar chemical structure or similar biological effects;

D. beta-2 agonists, including optical isomers, including d- and l-, where relevant;

E. hormone and metabolic modulators; or

F. diuretics and other masking agents, including substances with similar chemical structure or similar biological effects.

6. Prohibited methods of manipulation of blood and blood components include:

A. the administration or reintroduction of any quantity of autologous, allogenic, or heterologous blood or red blood cell products of any origin into the circulatory system;

B. artificially enhancing the uptake, transport, or delivery of oxygen, including perfluorochemicals, efaproxiral (RSR13), and modified hemoglobin products, e.g. hemoglobin-based blood substitutes, microencapsulated hemoglobin products, excluding supplemental oxygen; or

C. tampering, or attempting to tamper, to alter the integrity and validity of samples collected by authority of the Commission. Tampering methods include blood serum or urine substitution or adulteration, e.g., proteases.

7. Any reference to substances in Section R52-7-13 does not alter the requirements for testing concentrations in race day samples or the requirements of post-race testing.

A. If laboratory testing detects any prohibited substance identified by this rule, the finding shall be reported as a violation. Upon a finding of violation, the horse shall be disqualified, and the owner of the horse shall not participate in any portion of the purse, stakes, trophy, or any other award.

B. Any purse, stakes, trophy, or award shall be returned if it was presented to the owner of the horse, upon the finding of a violation of this section.

C. Any positive test for a prohibited drug, medication, or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule.

D. It is presumed that any sample or accepted specimen tested by an approved laboratory is from the horse in question. With regard to an accepted sample, It is also presumed that:

- [i]a. the integrity of the sample is preserved;
- [ii]b. any procedures, collection, preservation, and analysis of the sample are correct and accurate; and
- [iii]c. it is the burden of the owner, trainer, assistant trainer, or other responsible party to prove by substantial evidence to the contrary in the matter to the administrative [S]stewards or at the Commission hearing.

8. Penalties. Upon finding a violation of these medications and prohibited substances rules, the [S]stewards shall:

A. consider the classification level of the violation as listed at the time in the Uniform Classification Guidelines of Foreign Substances, as promulgated in the following penalty matrices maintained by the department that are incorporated by reference: Recommended Penalties for Doping or Equine Endangerment Violations, and 2019-08 Recommended Penalties by Substances[-];

B. impose penalties and disciplinary measures consistent with the recommendations contained therein; and

C. [-] consult with the Official Veterinarian to determine if the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's Medication Report Form received, pursuant to Subsection R52-7-8(7).

9. The [S]stewards may also consult with the laboratory director or other individuals to determine the seriousness of the laboratory finding or the medication violation. Penalties for [a] medication and drug violations shall be investigated and reviewed on a case by case basis.

[A-] Extenuating factors the [S]stewards may consider in determining penalties include:

- [i]a. the past record of the trainer, veterinarian and owner in drug cases;
- [ii]b. the potential of the drug to influence a horse's racing performance;
- [iii]c. the legal availability of the drug;
- [iv]d. whether the responsible party knew or should have known of the administration of the drug, or intentionally administered the drug;
- [v]e. the steps taken by the trainer to safeguard the horse;
- [vi]f. the purse of the race; and
- [vii]g. whether the licensed trainer was acting on the advice of a licensed veterinarian.

10. As a result of an investigation, there may be mitigating circumstances for which a lesser or no penalty is appropriate for the licensee, or aggravating factors that may increase the penalty beyond the minimum.

**KEY: horses, horse racing**

**Date of Enactment or Last Substantive Amendment: ~~August 10, 2020~~ 2021**

**Notice of Continuation: August 25, 2016**

**Authorizing, and Implemented or Interpreted Law: 4-38-4**



NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R58-11	Filing No. 53299

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Animal Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Leann Hunting	801-982-2242	leannhunting@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R58-11. Slaughter of Livestock or Poultry
<b>3. Purpose of the new rule or reason for the change:</b>
Changes to this rule are required by H.B. 358, passed during the 2020 General Session. This legislation requires that the Department of Agriculture and Food's (Department) rules governing the 1,000 bird and 20,000 bird poultry exemptions are not more stringent than federal requirements.
<b>4. Summary of the new rule or change:</b>
Changes have been made to Section R58-11-7 that remove requirements for persons to receive an exemption to slaughter 1,000 or 20,000 of their own poultry per year to ensure Department requirements are not more stringent than federal requirements. This includes removing the requirement for obtaining a license from the Department to qualify for the exemption and removing some distribution and labeling requirements.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
---

<b>A) State budget:</b>																
Because the Department is no longer able to issue licenses for the 1,000 bird and 20,000 bird exemptions, the Department will lose fee revenue of approximately \$600 per year based on an average of 4 licenses issued at \$150 each.																
<b>B) Local governments:</b>																
There are no anticipated costs or savings to local governments because they do not regulate poultry production or act as poultry producers.																
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):																
There would be savings to small businesses of approximately \$300 per year given that half of exempt producers are small businesses that no longer would need to pay for an exemption license.																
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):																
There would be savings to non-small businesses of approximately \$300 per year given that half of exempt producers are non-small businesses that no longer would need to pay for an exemption license.																
<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 are no anticipated costs or savings to other persons who are not exempt poultry producers.																
<b>F) Compliance costs for affected persons:</b>																
Compliance costs for affected persons have decreased because they no longer have to pay a \$150 fee for a 1,000 bird or 20,000 bird exemption license.																
<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>																
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$600</td> <td>\$600</td> <td>\$600</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$600	\$600	\$600	Local Governments	\$0	\$0	\$0	Small Businesses	\$	\$0	\$0
Fiscal Cost	FY2021	FY2022	FY2023													
State Government	\$600	\$600	\$600													
Local Governments	\$0	\$0	\$0													
Small Businesses	\$	\$0	\$0													

NOTICES OF PROPOSED RULES

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$300	\$300	\$300
Non-Small Businesses	\$300	\$300	\$300
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$600</b>	<b>\$600</b>	<b>\$600</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 Acting Commissioner of the Department of Agriculture and Food, Craig W. Butters, has reviewed and approves the regulatory impact analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
These rule changes will positively impact businesses who no longer have to pay a fee to be exempt from poultry slaughter and processing requirements to slaughter a limited number of their own poultry.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Craig W. Butters, Acting 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>		
Section 4-32-109		

**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.
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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>	03/17/2021

<b>10. This rule change MAY become effective on:</b>	03/24/2021
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>	Craig W. Butters, Acting Commissioner	<b>Date:</b>	01/27/2021
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**R58. Agriculture and Food, Animal Industry.**

**R58-11. Slaughter of Livestock and Poultry.**

**R58-11-1. Authority.**

Promulgated under authority of Section 4-32-109.

**R58-11-2. Definitions.**

(1) "Adulterated" means any meat or poultry product as described in Subsection 4-32-105(1).

(2) "Bill of Sale for Hides" means a hide release or other formal means of transferring the title of a hide.

(3) "Business" means an individual or organization receiving remuneration for a service.

(4) "Commissioner" means the Commissioner of Agriculture or [his]their designee.

(5) "Custom Slaughter-Release Permit" means a permit that serves as a brand inspection certificate and allows an animal owner to have their animal farm custom slaughtered.

(6) "Department" means the Utah Department of Agriculture and Food.

(7) "Detain or Embargo" means the holding of a food or food product for legal verification of adulteration, misbranding, or proof of ownership.

(8) "Emergency Slaughter" for the purpose of this [chapter]rule, does not include slaughter of non-ambulatory injured cattle. For the purposes of this chapter, non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food.

(9) "Farm Custom Slaughtering" means the slaughtering, skinning, and preparing of livestock and poultry by humane means for the purpose of human consumption that is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.

(10) "Food" means a product intended for human consumption.

(11) "Immediate Family" means persons living together in a single dwelling unit and their sons and daughters.

(12) "License" means a license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

(13) "Licensee" means a person who possesses a valid farm custom slaughtering license.

(14) "Misbranded" means any meat or poultry product as described in Subsection 4-32-105 (27).

(15) "Owner" means a person holding legal title to the animal.

~~[(16) "Sanitation Standards", includes the following:~~

~~(a) Sanitary operating conditions: All food-contact surfaces and non-food-contact surfaces of an exempt facility are cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product. Cleaning compounds, sanitizing agents, processing aids, and other chemicals used by an exempt facility are safe and effective under the conditions of use. These chemicals are used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment is available to inspection program employees for review. Product is protected from adulteration during processing, handling, storage, loading, and unloading, and during transportation from exempt establishments.~~

~~(b) Grounds and pest control: The grounds of an exempt operation are maintained to prevent conditions that could lead to insanitary conditions or adulteration of product. Each plant operator has in place a pest management program to prevent the harborage and breeding of pests on the grounds and within the facilities. The operator's pest control operation is capable of preventing product adulteration. Management shall make every effort to prevent entry of rodents, insects, or animals into areas where products are handled, processed, or stored. Each openings leading to the outside or to an area holding inedible product has an effective closure that completely fills the opening. Each area inside and outside the facility is maintained to prevent harborage of rodents and insects. Any pest control substance used is safe and effective under the conditions of use and is not applied or stored in a manner that would result in the adulteration of product or the creation of insanitary conditions.~~

~~(c) Sewage and waste disposal: Each sewage and waste disposal system properly removes sewage and waste material—feces, feathers, trash, garbage, and paper from the facility. Sewage is disposed of into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. If the sewage disposal system is a private system requiring approval by a state or local health authority, upon request, the management must furnish to the inspector a letter of approval from that authority.~~

~~(d) Water supply and water, ice, and solution reuse: A supply of running water that complies with the National Primary Drinking Water regulations, 40 CFR part 141, at a suitable temperature and under pressure as needed, is provided in any area where required for processing product; for cleaning rooms and equipment, utensils, and packaging materials; and for employee sanitary facilities. If a facility uses a municipal water supply, it must make available to the inspector, upon request, a water report, issued under the authority of the state or local health agency, certifying or attesting to the potability of the water supply. If a facility uses a private well for its water supply, it must make available to the inspector, upon request, documentation certifying the potability of the water supply that has been renewed at least semi-annually.~~

~~(e) Facilities: Maintenance of facilities during slaughtering and processing is accomplished in a manner to ensure the production of wholesome, unadulterated product.~~

~~(f) Dressing rooms, lavatories, and toilets: Dressing rooms, toilet rooms, and urinals are sufficient in number, ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. Dressing rooms, lavatories, and toilets are separate from the rooms and compartments in which products are processed, stored, or handled.~~

~~(g) Inedible Material Control: The operator handles and maintains inedible material in a manner that prevents the diversion of inedible animal product into human food channels and prevents the adulteration of human food.]~~

(17) "Commerce" means the exchange transportation of poultry product between states, U.S. territories, including Guam, Virgin Islands of the United States, American Samoa, and the District of Columbia.

### **R58-11-3. Sanitation Standards.**

Sanitation standards shall include:

(1) Sanitary operating conditions: Food-contact surfaces and non-food-contact surfaces shall be cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product. Cleaning compounds, sanitizing agents, processing aids, and other chemicals used shall be safe and effective under the conditions of use. These chemicals shall be used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment shall be available to inspection program employees for review. Product shall be protected from adulteration during processing, handling, storage, loading, and unloading, and during transportation.

(2) Grounds and pest control: Grounds shall be maintained to prevent conditions that could lead to insanitary conditions or adulteration of product. A pest management program shall be in place to prevent the harborage and breeding of pests on the grounds and within buildings. The pest control program shall be capable of preventing product adulteration. Every effort shall be made to prevent entry of rodents, insects, or animals into areas where product is handled, processed, or stored. Each opening leading to the outside or to an area holding inedible product shall have an effective closure that completely fills the opening. Each area inside and outside shall be maintained to prevent harborage of rodents and insects. Any pest control substance used shall be safe and effective under the conditions of use and shall not be applied or stored in a manner that would result in the adulteration of product or the creation of insanitary conditions.

(3) Each sewage and waste disposal system shall properly remove sewage and waste material such as feces, feathers, trash, garbage, and paper. Sewage shall be disposed of into a sewage system separate from other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. If the sewage disposal system is a private system requiring approval by a state or local health authority, a letter of approval from that authority to the inspector shall be provided upon request.

(4) A supply of running water that complies with the National Primary Drinking Water regulations, 40 CFR 141, at a suitable temperature and under pressure as needed, shall be provided in any area where required for processing product; for cleaning rooms and equipment, utensils, and packaging materials; and for employee sanitary facilities. If a municipal water supply is used, the supplier shall provide a water report, issued under the authority of the state or local health agency, certifying or attesting to the potability of the water supply, and make the report available to the inspector, upon request. If a private well is used, the potability of the water supply shall be documented at least semi-annually and documentation shall be made available to the inspector, upon request.

(5) Maintenance of facilities during slaughtering and processing shall be accomplished in a manner to ensure the production of wholesome, unadulterated product.

(6) Dressing rooms, toilet rooms, and urinals shall be sufficient in number, ample in size, conveniently located, and maintained in a sanitary condition and in good repair to ensure cleanliness of any person handling any product. Dressing rooms, lavatories, and toilets shall be separate from the rooms and compartments in which products are processed, stored, or handled.

(7) Inedible material shall be handled and maintained in a manner that prevents the diversion of inedible animal product into human food channels and prevents the adulteration of human food.

**R58-11-~~3~~4. [~~Registration and License Issuance~~]Farm Custom Slaughtering License.**

~~[(1) Farm Custom Slaughtering License.]~~

~~[(a)1] Any person who desires to do farm custom slaughtering shall apply to the department for a Farm Custom Slaughtering License.~~

~~[(2) An application for a Farm Custom Slaughtering license will shall be ~~made~~ on a form provided by the department ~~for a Farm Custom Slaughter License~~. The ~~form~~ application shall show:~~

~~[(i)a] the name, address, and telephone number of the owner;~~

~~[(ii)b] the name, address, and telephone number of the operator if it is different than the owner; and~~

~~[(iii)c] a brief description of the vehicle to be used, along with the license number.~~

~~[(b)3] [~~Licenses~~]Farm Custom Slaughtering licenses will be valid for the calendar year. Each licensee will be required to re-apply for a license ~~every~~ each calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the department.~~

~~[(e)4] [~~Registration~~]Farm Custom Slaughtering licensure will not be recognized as complete until the applicant has demonstrated the ability to slaughter and has completed and signed the ~~registration~~ license application form.~~

~~[(d)5] A fee, as set forth in the fee schedule approved by the legislature, must shall be paid prior to license issuance.~~

**R58-11-~~4~~5. Equipment and Sanitation Requirements-Farm Custom Slaughter.**

The following equipment and sanitation requirements shall apply to farm custom slaughtering:

~~[(1) Unit or vehicle and equipment used for farm custom slaughtering.]~~

~~[(a)1] The unit or vehicle used for farm custom slaughtering shall be constructed so as to permit maintenance consistent with the sanitation standards listed in Section R58-11-3.~~

~~[(b)2] A tripod or rail capable of lifting a carcass to a height that enables the carcass to clear the ground for bleeding and evisceration~~

~~must~~ shall be incorporated into the unit or vehicle. Any ~~H~~ hook, gamble, or rack used to hoist and eviscerate animals shall be of easily cleanable metal construction.

~~(e)3] Knives, scabbards, saws, and other equipment shall be of rust resistant metal or other impervious easily cleanable material.~~

~~(i)a] A clean dust proof container shall be used to transport and store each instrument and utensil used in slaughtering animals.~~

~~(d)4] A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Each water system must shall be maintained according to sanitary standards, and only potable water shall be used.~~

~~(e)5] A sanitation tank large enough to allow complete immersion of each tool used for slaughtering must shall be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochlorite, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must shall be maintained at a sufficient level to disinfect each utensil. Hot water, cleaning agents, and disinfectant shall be available ~~at all times~~ if chemicals are used in lieu of 180 degrees Fahrenheit water.~~

~~(f)6] Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.~~

~~(g)7] Any apron, frock and other outer clothing worn by a person who handles meat must be clean and of material that is easily cleanable.~~

~~(h)8] Any inedible product and offal will be denatured, pursuant to 9 CFR 325.13 with either an approved denaturing agent or by use of pounce material as a natural denaturing agent.~~

~~(i)9] When a licensee transports uninspected meat to an establishment for processing, they shall:~~

~~(i)a] do so in a manner whereby product will not be adulterated or misbranded, or mislabeled; and~~

~~(ii)b] transport the meat in such a way that it is properly protected; and~~

~~(ii)c] deliver carcasses in such a way that they shall be placed under refrigeration at a temperature at or below 40 degrees Fahrenheit within one hour of the time of slaughter.~~

~~(j)10] Sanitation.~~

~~(i)a] Unit or Vehicle.~~

~~(A)i] The unit or vehicle must be thoroughly cleaned after each daily use.~~

~~(B)ii] Food-contact and non-food contact surfaces of utensils and equipment must be cleaned and sanitized as necessary to prevent the creation of insanitary conditions and the adulteration of carcasses and parts.~~

~~(C)iii] Carcasses must shall be protected from adulteration during processing, handling, storage, loading, unloading and during transportation to processing establishments.~~

~~(ii)b] Equipment.~~

~~(A)i] Knives, scabbards, saws, and ~~all~~ other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.~~

~~(B)ii] Equipment must shall be cleaned and sanitized after each slaughter and immediately before each slaughter.~~

~~(iii)c] Inedible.~~

~~(A)i] Inedible shall be placed in designated containers and be properly denatured, and the inedible containers must shall be clearly marked "Inedible Not For Human Consumption" in letters not less than 4 inches in height.~~

(~~B~~ii) Containers for inedible shall be kept clean and properly separated from edible carcasses to prevent adulteration.

(~~iv~~d) Personal Cleanliness.

(~~A~~i) Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medication, and similar substances.

(~~B~~ii) Outer clothing worn by a permittee while handling exposed carcasses shall be clean.

(~~C~~iii) No licensee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores, or an acute respiratory infection shall participate in livestock slaughtering.

(~~D~~iv) Hand wash facilities shall be used as needed to maintain good personal hygiene.

#### **R58-11-~~5~~6. Slaughtering Procedures of Livestock.**

(1) Slaughter Area

(a) Slaughtering may not take place under adverse conditions such as blowing dirt, dust, or in mud.

(b) If a slaughter area is used for repeated kills, the area should be maintained to prevent blood from collecting, running off on to adjacent property, or contaminating a water source.

(c) Hides, viscera, blood, pounce material, and ~~all~~ tissue ~~must~~ shall be removed and disposed at a rendering facility, landfill, composting, or by burial as allowed by law.

(2) Humane Slaughter. [-] Each animal shall be rendered insensible to pain by a single blow, or gun shot or electrical shock, or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

(3) Hoisting and Bleeding. [-] Each animal shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

(4) Skinning. [-] Carcass and head skin ~~must~~ shall be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet ~~must~~ shall be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

(5) Evisceration. [-] Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass or viscera contamination.

(6) Carcass washing. [-] Hair, dirt, and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

#### **R58-11-~~6~~7. Identification and Records.**

(1) Livestock Identification. [-] Pursuant to Section 4-24-304, it shall be unlawful for any license holder to slaughter livestock which do not have a Brand Inspection Certificate or Farm Custom Slaughter Tag filled out at the time of slaughter.

(a) Animal owners ~~must~~ shall have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a department Brand Inspector prior to slaughter, and ~~must~~ shall pay the legal brand inspection fee and beef promotion fee. This is accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection Certificate (Custom Slaughter-Release Permit).

(b) Animal owners ~~must~~ shall obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of \$1 each. These tags will be required on beef, pork, and sheep.

(2) Records.

(a) The Custom Slaughter-Release Permit or Farm Custom Slaughter Tag shall include the following information:

(i) An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (insert name)". I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold." This statement ~~must~~ shall be signed by the owner or designee;

(ii) In addition to this affidavit, the following information will be recorded:

(A) date;

(B) owner's name, address and telephone number;

(C) animal description including brands and marks;

(D) Farm Custom Slaughter Tag number;

(E) location of slaughter;

(F) name of licensee;

(G) licensee permit number; and

(H) carcass destination.

(b) Prior to slaughter the licensee shall prepare the Farm Custom Slaughter Tag with complete and accurate information.

(i) One tag shall stay in the license holder's file for at least one year.

(ii) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the department by the 10th of each month for the preceding month's slaughter by the licensee.

(iii) After slaughter, ~~all~~ carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag ~~must~~ shall be affixed to each quarter of beef and each half of pork and sheep.

(c) Hide Purchase. [-] Licensee receiving hides for slaughtering services ~~must~~ shall obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership, pursuant to Section 4-24-18.

#### **R58-11-~~7~~8. Poultry Slaughter.**

(1) Personal Use Exemption.

(a) A person who raises poultry may slaughter or process the poultry if:

(i) slaughtering or processing poultry is not prohibited by local ordinance;

(ii) the poultry product derived from the slaughtered poultry is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests;

(iii) the slaughtering and processing of the poultry is performed only by the owner or an employee;

(iv) the poultry is healthy when slaughtered;

(v) the exempt poultry is not sold or donated for use as human food; and

(vi) the immediate container bears the statement, "NOT FOR SALE".

(2) Farm Custom Slaughter and Processing

(a) A person may slaughter or process poultry belonging to another person if:

(i) the person holds a valid farm custom slaughter license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

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(iii) the licensee does not engage in the business of buying or selling poultry product capable for use as human food;

(iv) the poultry is healthy when slaughtered;

(v) the slaughtering or processing is conducted in accordance with sanitation standards that produce poultry product that is sound, clean, and fit for human food;

(vi) the unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance according to sanitation standards; and

(vii) the immediate container bears the following information:

- (A) the owner's name and address;
- (B) the licensee's name and address, and;
- (C) the statement, "NOT FOR SALE".

(3) Producer or Grower 1,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more than 1,000 birds of their own raising in a calendar year for distribution as human food if:

~~(i) the person holds a valid poultry exemption license issued by the department;~~

~~(ii) slaughtering or processing poultry is not prohibited by local ordinance;~~

~~(iii) the poultry grower does not engage in buying or selling poultry product other than product produced from poultry raised on their own farm, including rented or leased property;~~

~~(iv) the slaughtering and or processing are conducted under the sanitation standards capable of producing poultry products that are sound, clean, fit for human food, and not adulterated;~~

~~(v) the producer keeps slaughter records and records covering the sales of poultry product to customers for the current calendar year; and~~

~~(vi) the poultry products do not move in commerce[;].  
[~~(vii) the poultry products are distributed directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and~~~~

~~(viii) each immediate container bears the following information:~~

- ~~(A) name of product;~~
- ~~(B) ingredients statement if applicable;~~
- ~~(C) net weights statement;~~
- ~~(D) name and address of processor;~~
- ~~(E) safe food handling statement;~~
- ~~(F) date of package and lot number, and;~~
- ~~(G) the statement "Exempt R58-11-7(3)".~~

~~(b) The department shall maintain a registry of persons who slaughter or process fewer than 1,000 poultry during the calendar year.~~

(4) Producer or Grower 20,000 Bird Limit Exemption.

(a) A poultry grower may slaughter no more than 20,000 healthy birds of his or her own raising in a calendar year for distribution as human food if:

~~(i) the person holds a valid poultry exemption license issued by the department;~~

~~(ii) slaughtering or processing poultry is not prohibited by local ordinance;~~

~~(iii) the poultry grower does not engage in buying or selling poultry product other than th[ese]at produced from poultry raised on their own farm, including rented or leased property;~~

~~(iv) the slaughtering or processing is conducted in a fixed establishment and in accordance with sanitation standards that produce poultry product that is sound, clean, and fit for human food;~~

~~(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year;~~

~~(vi) the poultry product[s] does not move in commerce, as the term is defined in 9 CFR 381.1[. Distribution is directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared]; and~~

~~(vii) the immediate container[s] bear the following information:~~

- ~~(A) name of product;~~
- ~~[~~(B) ingredients statement (if applicable);~~~~
- ~~~~(C) net weights statement;~~~~
- ~~(D) name and address of processor;~~
- ~~[~~(E) safe food handling statement;~~~~
- ~~~~(F) date of package or Lot number,] and;~~~~
- ~~(G) the statement "Exempt R58-11-7(4)".~~

~~(b) The department shall maintain a registry of persons who slaughter or process fewer than 20,000 poultry during the calendar year.~~

(5) Producer or Grower or Other Person Exemption

(a) The term "Producer or Grower or Other Person" in this section means a single entity, which may be:

(i) A poultry grower who slaughters and processes poultry that they raised for sale directly to household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals served or sold directly to customers.

(ii) A person who purchases live poultry from a grower and then slaughters these poultry and processes such poultry for sale directly to household consumers, restaurants, hotels, and boarding houses to be served in those homes or dining rooms for the preparation of meals sold directly to customers.

(b) A business may slaughter and process poultry under this exemption if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the producer or grower or other person slaughters for processing and sale directly to household consumers, restaurants, hotels, and boarding houses for use in dining rooms or in the preparation of meals sold directly to customers;

(iv) the producer or grower or other person slaughters no more than 20,000 birds in a calendar year that the producer or grower or other person raised or purchased;

(v) the producer or grower or other person does not engage in the business of buying or selling poultry or poultry products prepared under an other exemptions in the same calendar year they claim the Producer or Grower or Other Person Exemption;

(vi) the poultry products do not move in commerce. Distribution is directly to household consumers, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the slaughtering or processing is conducted in a fixed establishment and in accordance with sanitation standards that produce poultry products that are sound, clean, and fit for human food;

(viii) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

- (ix) the immediate containers bear the following information:
  - (A) name of product;
  - (B) ingredients statement if applicable;
  - (C) net weights statement;
  - (D) name and address of processor;
  - (E) safe food handling statement;
  - (F) date of package or Lot number, and;
  - (G) the statement "Exempt R58-11-7(5)".

(c) A business preparing poultry product under the Producer or Grower or Other Person Exemption may not slaughter or process poultry owned by another person.

(d) A business preparing poultry products under the Producer or Grower or Other Person Exemption may not sell poultry products to a retail store or other producer or grower.

(6) Small Enterprise Exemption

(a) A business that qualifies for the Small Enterprise Exemption may be:

(i) ~~[A]~~[A] a producer or grower who raises, slaughters, and dresses poultry for use as human food whose processing of dressed exempt poultry is limited to cutting up;

~~[A]~~[A] ii) ~~[A]~~[A] a business that purchases live poultry that it slaughters and whose processing of the slaughtered poultry is limited to the cutting up; or

~~[B]~~[B] iii) ~~[A]~~[A] a business that purchases dressed poultry, ~~which that~~ it distributes as carcasses and whose processing is limited to the cutting up of inspected or exempted poultry products, for distribution for use as human food.

~~[ii]~~[b] ~~[A]~~[A] a business may slaughter, dress, and cut up poultry for distribution as human food if~~;~~:

~~[A]~~[i] the person holds a valid poultry exemption license issued by the department;

~~[B]~~[ii] slaughtering or processing poultry is not prohibited by local ordinance;

~~[C]~~[iii] the processing of federal or state inspected or exempt poultry product is limited to the cutting up of carcasses or the business slaughters and dresses or cuts up no more than 20,000 birds in a calendar year;

~~[D]~~[iv] the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitation standards that produce poultry product that is sound, clean, and fit for human food;

~~[E]~~[v] the facility used to slaughter or process poultry is not used to slaughter or process another person's poultry; and

~~[F]~~[vi] the immediate containers bear the following information:

- ~~[F]~~[A] name of product;
- ~~[H]~~[B] ingredients statement if applicable;
- ~~[H]~~[C] net weights statement;
- ~~[V]~~[D] name and address of processor;
- ~~[V]~~[E] safe food handling statement;
- ~~[V]~~[F] date of package or Lot number, and;
- ~~[V]~~[G] the statement "Exempt R58-11-7(6)."

~~[ii]~~[c] A business may not cut up and distribute poultry product produced under the Small Enterprise Exemption to a business operating under the following exemptions:

- ~~[A]~~[i] Producer or Grower or PGOP Exemption;
- ~~[B]~~[ii] Retail Dealer; or
- ~~[C]~~[iii] Retail Store.

**R58-11-~~[8]~~[9]. Producer and Grower Sharing a Fixed Facility.**

(1) Each producer or grower ~~must~~shall comply with ~~all~~the laws and regulations governing establishments as set forth in Title 4, Chapter 32, Utah Meat and Poultry and Poultry Products Inspection and

Licensing Act, this rule, the United States Department of Agriculture (USDA) Poultry Exemptions, and federal regulations that apply.

(2) The poultry producer or grower shall hold a valid Custom Exempt Meat Establishment License (2202) issued by the department. The individual who holds the 2202 license shall be present when slaughter and processing operations are being performed.

(3) The department shall be notified five business days prior to slaughtering and processing. The individual shall provide the department with the following information pertaining to the slaughtering and processing of birds:

- (a) the date;
- (b) the time; and
- (c) the location.

(4) The producer or grower shall:

(a) conduct a pre-operational inspection on ~~all~~any food-contact surfaces;

(b) document the findings of the pre-operational inspection and corrective actions pursuant to 9 CFR 416.12(a) and 416.15 prior to the commencement of operations;

(c) maintain records for at least one year and have them available for inspection by department officials;

(d) fully label product in accordance with this rule before leaving the facility;

(e) maintain the product temperature at 40 degrees F or less during transport;

(f) keep a written recall plan pursuant to 9 CFR 418 and have it available for inspection by department officials;

(5) Producers or growers shall not process on the same day as any other producer or grower.

**R58-11-~~[9]~~[10]. Enforcement Procedures.**

(1) Livestock and Poultry Slaughtering License.

(a) It shall be unlawful for any person to slaughter or assist in slaughtering livestock and poultry as a business outside of a licensed slaughterhouse unless they hold a valid Farm Custom Slaughtering License issued by the department.

(b) Only persons who comply with ~~Utah Code~~Title 4, Chapter 32, the Utah Meat and Poultry Products Inspection and Licensing Act and ~~Rules pursuant thereto~~associated rules, and Title 4, Chapter 24, ~~the~~Utah Livestock Brand and Anti-Theft Act, shall be entitled to receive and retain a license.

(c) License may be renewed annually and shall expire on the 31st of December of each year.

(2) Suspension of license ~~[ ]~~ license may be suspended whenever:

(a) the department has reason to believe that an eminent public health hazard exists;

(b) insanitary conditions are such that carcasses would be rendered adulterated and or contaminated;

(c) the license holder has interfered with the department in the performance of its duties;

(d) the licensee violates Title 4, Chapter 32, the Utah Meat and Poultry Products Inspection and Licensing Act or ~~the~~Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or ~~rules pursuant to these acts~~associated rules.

(3) The department may, pursuant to 9 CFR ~~[Part]~~500 suspend or terminate any exemption with respect to any person whenever the department finds that such action will aid in effectuating the purposes of the Act. Failure to comply with the conditions of the exemption, including failure to process poultry and poultry product under sanitation standards, may result in termination of an exemption, in addition to other penalties consistent with 9 CFR 318.13.

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(4) Warning letter, [-] In instances when a violation may have occurred a warning letter may be sent to the licensee that specifies the violations and affords the holder a reasonable opportunity to correct them.

(5) Hearings, [-] Whenever a licensee has been given notice by the department that suspected violations may have occurred or when a license is suspended, they may have an opportunity for a hearing to state their views before the department.

(6) Reinstatement of Suspended Permit, [-] Any person whose license has been suspended may make application for the purpose of reinstatement of the license. The department may then re-evaluate the applicant and conditions. If the applicant has demonstrated to the department that they will comply with the rules, the license may be reinstated.

(7) Detainment or Embargo, [-] Any meat found in a food establishment that does not have the proper identification or any uninspected meat slaughtered by a licensee that does not meet the requirements of these rules may be detained or embargoed.

(8) Condemnation, [-] Meat that is determined to be unfit for human consumption may be denatured or destroyed.

**KEY: food inspections, slaughter, livestock, poultry**  
**Date of Enactment or Last Substantive Amendment: [~~January 12, 2017~~2021]**  
**Notice of Continuation: December 19, 2019**  
**Authorizing, and Implemented or Interpreted Law: 4-32-109**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R58-21	Filing No. 53311

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Animal Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Dean Taylor	801-982-2243	djtaylor@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R58-21. Trichomoniasis
<b>3. Purpose of the new rule or reason for the change:</b>
These changes are needed to add clarification and additional requirements to this rule, based on the recent experience the Department of Agriculture and Food (Department) has had administering and enforcing the Trichomoniasis program. Changes are needed with regard to sampling, testing, and quarantine procedures. The changes will protect animal and human safety in Utah.
<b>4. Summary of the new rule or change:</b>
The changes add definitions to this rule. The changes add a requirement that samples be taken by a certified veterinarian and add criteria for pool samples. The changes also clarify testing requirements with regard to resident or imported bulls. The changes add quarantine requirements for positive bulls and females.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget because the changes clarify and enhance procedures but do not affect existing fees charged by the Department and the Department does not anticipate an increase in compliance costs.
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments because they do not administer the program or own animals affected by Trichomoniasis.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There are no anticipated costs or savings to small businesses because the rule changes do not affect fees charged by the Department or compliance costs.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There are no anticipated costs or savings to non-small businesses because the rule changes do not affect fees charged by the Department or compliance costs.
<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 <i>agency</i>):</b>



There are no anticipated costs or savings to other persons because the rule changes do not affect fees charged by the Department or compliance costs.

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

The rule changes clarify procedures but do not affect 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>

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

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

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

These changes are necessary to ensure animals and persons in Utah are kept safe and should not have a fiscal impact on businesses.

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

Craig W. Buttars, Acting 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 4-31-109

**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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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>	Craig W. Buttars, Acting Commissioner	<b>Date:</b>	02/01/2021
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**R58. Agriculture and Food, Animal Industry.**

**R58-21. Trichomoniasis.**

**R58-21-1. Authority.**

(1) Promulgated under authority of Section 4-31-109.

(2) It is the intent of this rule to eliminate or reduce the spread of bovine trichomoniasis in Utah.

**R58-21-2. Definitions.**

(1) "Acceptable media" means any Department approved media in which samples may be transferred and transported.

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(2) "Approved slaughter facility" means a slaughter establishment that is either under state or federal inspection.

(3) "Approved test" means a test approved by the state of origination to diagnose trichomoniasis in bulls. If the state of ~~origination~~ origination has no approved test for the diagnosis of ~~[‡]Trichomoniasis~~ it shall mean one sample tested by a method approved by the ~~[‡]department~~ department.

(4) "Brand" means a minimum of a 2 X 3 hot iron single character lazy V applied to the left of the tailhead of a bull, signifying that the bull is infected with the venereal disease, ~~[‡]Trichomoniasis~~.

~~(5) Bull means any intact male of any of the domesticated cattle species as well as bison.~~

~~(6) "Certified veterinarian" means a federally accredited veterinarian who has been certified by the Utah Department of Agriculture and Food to collect samples for [‡]Trichomoniasis testing.~~

~~(7) "Commuter bulls" means bulls traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians or bulls traveling on a Certificate of Veterinary Inspection where there is no change of ownership.~~

~~(7) "Confinement" means bulls held in such manner that escape is improbable. Typical barbed wire or net pasture fencing does not constitute confinement.~~

~~(8) "Dairy bull" means a bull of any breed used for reproductive purposes on a dairy that is confined in such a way that it does not have exposure to female cattle of other herds. The dairy shall have fencing that is impenetrable by a bull.~~

~~(9) "Department" means the Utah Department of Agriculture and Food.~~

~~(10) "Exposed to female cattle" means bulls with freedom from restraint such that breeding is a possible activity.~~

~~(11) "Feeder Bulls" means bulls not exposed to female cattle and kept in confinement for the purpose of feeding and only go to slaughter.~~

~~(12) "Negative bull" means a bull that has been tested with official test procedures and ~~[found free from infection by Tritrichomonas foetus]~~ an approved laboratory has not detected ~~Tritrichomonas foetus~~.~~

~~(13) "Official tag" means a tag authorized by the [‡]department that is placed in the right ear of a bull by a certified veterinarian after being tested for [‡]Trichomoniasis. The color of the official tag shall be changed yearly.~~

~~(14) "Official test" means a test currently approved by the [‡]department for detection of Tritrichomonas foetus.~~

~~(15) "Positive bull" means a bull that has been tested with official test procedures and found to be infected by Tritrichomonas foetus.~~

~~(16) "Positive herd" means any herd or group of cattle owned by one or more persons ~~[which]that~~ shares common grazing or feeding operations and in which one or more animals has been diagnosed with ~~[‡]Trichomoniasis~~ ~~[within the last 12 months]~~.~~

~~(17) "Qualified feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle ~~[heifers, cows, or bulls]~~. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter. cattle or bison confined to a dry lot area that is used to upgrade or finish feeding animals going only to slaughter.~~

~~(18) "Test chart" means a document which certifies that a bull has been subjected to an official test for [‡]Trichomoniasis and indicates the results of the test.~~

~~(19) "Trichomoniasis" means a venereal disease of bovidae caused by the organism Tritrichomonas foetus.~~

**R58-21-3. Trichomoniasis - Sampling and Testing Procedures.**

(1) Sample collection - Samples are obtained by a certified veterinarian via ~~from~~ a vigorous scraping of the bull's prepuce using a sterile syringe and new pipette on each bull.

(2) Sample handling - Samples shall be transferred and transported in an approved ~~[media]~~ transfer tube such as the BioMed TF transfer tube. Media should be maintained at 65 to 90 degrees Fahrenheit ~~[-], 18 to 32 degrees Celsius~~], during sampling and transport to clinic. Samples shall be set up for incubation within 24 hours of sampling. Samples shall also be protected from direct sunlight.

(3) Polymerase Chain Reaction (PCR) testing - The inoculated media shall be incubated at 98 degrees Fahrenheit ~~[-], 37 degrees Celsius~~], for 24 hours and then frozen. Samples may remain frozen for up to 3 weeks. Samples from herds under investigation or quarantine shall be mailed within 72 hours. The frozen sample ~~(s)]~~ shall be sent overnight on postal approved frozen packs to the Utah Veterinary Diagnostic Laboratory ~~[at 950 East 1400 North, Logan, Utah 84341]~~ or ~~[an other approved]~~ a laboratory approved by the State Veterinarian for PCR testing.

(4) Pool samples- At the State Veterinarian's discretion, herds at high risk or under investigation for Trichomoniasis may be required to have individual bull tests.

(5) Test results shall be recorded on test charts provided by the department.

(6) Test charts shall have the following information:

- (a) veterinarian's name and contact information;
- (b) owner's name and contact information;
- (c) bull's trichomoniasis tag number, RFID tag number, age, and breed;
- (d) the date of collection; and
- (e) the finalized test results.

(6) A copy of each test chart shall be submitted to the department within ten days of collecting the sample.

**R58-21-4. Trichomoniasis - Rules - ~~[Prevention and Control]~~ Resident Cattle and Bison.**

~~(1) All bulls twelve months of age and older, entering Utah, must be tested with an approved test for trichomoniasis by an accredited veterinarian prior to entry into Utah. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.~~

- ~~(2) The following bulls are exempted from (1) above:~~
  - ~~(a) Bulls going directly to slaughter or to a qualified feedlot;~~
  - ~~(b) Bulls kept in confinement operations;~~
  - ~~(c) Rodeo bulls for the purpose of exhibition, and~~
  - ~~(d) Bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin immediately after the event.~~

~~(3) Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry.~~

~~(4)(1) Resident Bulls- [All b]Bulls twelve months of age and older residing in Utah[-] and [all]-commuter bulls [must]shall be tested with an official test for trichomoniasis annually, between October 1 and May 15 of the following year, or prior to exposure to female cattle or bison according to approved sampling and testing procedures. [All]Each bull[s must] shall be classified as a negative bull prior to exposure to females [cattle]-or offer[ed] for sale.~~

- ~~(5) Testing shall be performed by a certified veterinarian.~~
  - ~~(a) All test results shall be recorded on test charts provided by the Department or electronic forms created by the certified veterinarian.~~
  - ~~(i) Electronic forms shall have the following information:~~

- ~~(A) Veterinarian's name and contact information~~
- ~~(B) Owner's name and contact information~~
- ~~(C) Bull's trichomoniasis tag number, age, breed~~
- ~~(D) Date of collection~~
- ~~(E) Test results~~
- ~~(b) A copy of all test charts shall be submitted to the Department within ten (10) days of collecting the sample.~~

~~(2) Resident dairy bulls are exempt from Trichomoniasis testing requirements unless they are being offered for sale or have had exposure to female cattle or bison from another herd.~~

~~([6]2) [A]Each bull[s] twelve months of age and older being offered for sale or lease for reproductive purposes in the state of Utah [must]shall be tested for [†]Trichomoniasis with an official test prior to sale. [Bulls]Each bull that has[we] had contact with female cattle or bison subsequent to testing must be re-tested prior to sale, lease, or transfer of ownership.~~

~~([7]3) It shall be the responsibility of the owner or his agent to declare[on the auction drive in slip, the trichomoniasis status of a bull being offered for sale at a livestock auction] to the brand inspector whether the bull has been exposed to female cattle or bison subsequent to testing on any bulls offered for breeding purposes regardless of whether the tag is current or not. This includes any bull offered for sale through an auction, private treaty or lease.~~

~~(a) Untested bulls[ (i.e. bulls without a current trichomoniasis test tag) ], including dairy bulls, must be sold for slaughter only[for direct movement to a qualified feedlot, or confinement operation, unless untested bulls are tested prior to exposure to female cattle] or for direct movement to a qualified feedlot.~~

~~(b) Any female bovine over the age of twelve months will be consigned and sold for slaughter or to a qualified feedlot only unless the owner declares that the herd is not a known positive Trichomonas fetus herd.~~

~~(c) Auctions shall have a separate pen for untested bulls where they do not have exposure to female cattle or bison being sold for reproductive purposes.~~

~~([8]4) Any bull [which]that has strayed and commingles with female cattle or bison may be required to be tested ([or re-tested]) for [†]Trichomoniasis. The owner of the offending bull shall bear [all]the costs for the official test.~~

~~([9]5) [All]Utah bulls[which are tested, shall be tagged in the right ear with an official tag by the certified veterinarian performing the test] that are tested shall be tagged with an RFID tag and with an official Trichomoniasis tag by the certified veterinarian performing the test.~~

~~(10) Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the trichomoniasis test charts from the testing veterinarian.~~

~~(11) Bulls which bear a current trichomoniasis test tag from another state which has an official trichomoniasis testing program will be acceptable to the State of Utah providing that they meet all trichomoniasis testing requirements as described above.]~~

**R58-21-5. Trichomoniasis - Rules -- Imported Cattle and Bison.**

(1) Imported Bulls- Bulls twelve months of age and older entering Utah, including dairy bulls, shall be tested with an approved test for Trichomoniasis by an accredited veterinarian approved to collect samples for Trichomoniasis by the state animal health official in the state of origin prior to entry into Utah with the following exemptions:

- (a) each bull going directly to slaughter or to a qualified feedlot;
- (b) each rodeo bull for the purpose of exhibition that will return immediately to the state of origin after the event; and

(c) each bull attending livestock shows for the purpose of exhibition only return immediately to the state of origin after the event.

(2) Rodeo and exhibition bulls with access to grazing, exposure to female cattle or bison, remaining in the state for more than one event, or being offered for sale are required to be tested prior to entry.

(3) Each bull that has had contact with female cattle or bison subsequent to testing shall be retested prior to entry.

(4) Reproductive bovine females- No female bovine of breeding age originating from a known positive Trichomonas foetus herd will be allowed to enter Utah with the following exemptions:

(a) cattle or bison from a premises of origin with two consecutive negative official Trichomoniasis PCR tests of the entire bull population and the cattle have not been exposed to positive or unknown status bulls since parturition, are at least 120 days pregnant, or are known virgin heifers;

(b) cattle or bison who are documented to have had at least 120 days of sexual isolation; or

(c) cattle or bison consigned directly to slaughter or to a qualified feedlot.

(5) Each bull entering the state under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the Trichomoniasis test charts from the testing veterinarian.

(6) Each bull that bears a current Trichomoniasis test tag from another state that has an official Trichomoniasis testing program will be acceptable for entry into the state providing that they meet Trichomoniasis testing requirements as described above.

**R58-21-6. Trichomoniasis - Rules - Positive [Bull]Herd.**

~~(1) [A bull is considered positive if a laboratory identifies Trichomonas foetus using an official test.]Upon diagnosis of Trichomonas foetus in a herd, a quarantine shall be placed and a Trichomoniasis Herd Plan shall be set by the State Veterinarian. The State Veterinarian may require additional testing of bulls, pregnancy testing of females, segregation of cattle or bison within a herd, and may quarantine a herd until the owner or manager of the herd has complied with any additional requirements set forth by the State Veterinarian and until the State Veterinarian releases the quarantine.~~

~~(2) [A]Each bull[s] testing positive for [†]Trichomoniasis [must]shall be reported by the certified veterinarian performing the test within 48 hours to[1) the owner, and 2) the State Veterinarian, by the certified veterinarian performing the test.] the owner of the animal and the State Veterinarian.~~

~~(3) Any veterinarian that discovers an infected herd shall immediately place the herd under a hold order. Results on follow-up tests on herd bulls shall be reported within 24 hours to the State Veterinarian.~~

~~(4) The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattlemen within ten days following such notification by the certified veterinarian.]~~

~~(4) A herd owner notified by a certified veterinarian of a positive bull shall, within ten days:~~

- ~~(a) notify the administrators of the common grazing allotment;~~
- ~~(b) notify any neighboring cattlemen whose property shares a fence line with the property that contains the positive herd; and~~
- ~~(c) provide the State Veterinarian's office with a list of any neighboring cattlemen.~~

~~(5) [A]Each bull[s] [which]that tests positive for [†]Trichomoniasis [must]shall be sent by direct movement within 14 days, to:~~

NOTICES OF PROPOSED RULES

- (a) ~~[S]~~slaughter at an approved slaughter facility~~[-or];~~
- (b) ~~[F]~~to a qualified feedlot for finish feeding and slaughter~~[-];~~ or
- (c) ~~[F]~~to an approved auction market for sale to ~~[one of the above facilities]~~slaughter or a qualified feedlot.

~~[(d)]~~6 An exemption to the 14 day requirement ~~[will]may~~ be given by the State Veterinarian to owners of bulls that are required to be in a drug withdrawal period prior to slaughter.

~~[(6)]~~7 ~~[Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official]~~If an owner releases any cattle or bison from the herd to a slaughter channel, the owner shall provide documentation on a department Movement of Cattle from a Trichomoniasis-Positive Herd form to the State Veterinarian within 72 hours stating the animals arrived at the slaughter channel. A VS 1-27 Form shall also be completed for cattle or bison moving out of the state by a federally-accredited veterinarian. Exposed cattle or bison are to be kept separate and apart from cattle or bison of the opposite sex. The exposed cattle will remain under quarantine until moved to slaughter.

~~[(7)]~~8 ~~[E]~~ach ~~[P]~~positive bull~~[s]~~ entering a qualified feedlot~~[-]~~ or approved auction market shall be identified with a lazy V brand on the left side of the tailhead by either the livestock inspector or the contract veterinarian, indicating that the bull is infected with ~~[T]~~Trichomoniasis.

~~[(8)]~~9 ~~[A]~~Each bull~~[s]~~ from a positive herd~~[s are]~~ is required to have one additional individual negative Polymerase Chain Reaction (PCR) test prior to exposure to female cattle or bison~~[-];~~ ~~[unless they are]~~Bulls that are being sent to an approved auction for slaughter, or to a qualified feedlot without exposure to female cattle or bison are not required to be tested, but shall be branded with a lazy V brand on the left side of the tailhead[- or being feed for slaughter in a confinement operation].

(10) Each female over 12 months of age not known to be a virgin heifer from a positive Trichomoniasis foetus herd may be sold for slaughter or feeding or may be quarantined on the premises of origin. Each female leaving the herd shall be accompanied by a department Movement of Cattle from a Utah Trichomoniasis-Positive Herd form. Each female moving to a qualified feedlot shall be identified with a lazy V brand on the left side of the tailhead to indicate that they are moving from an infected herd.

(11) Each female may be released from quarantine if the animal:

(a) has a calf at side with no exposure other than to known negative Trichomonas foetus bulls after parturition;

(b) has been in 120 days of isolation from breeding-age bulls; or

(c) is determined by a federally accredited veterinarian to be at least 120 days pregnant.

(12) The owner of the positive herd shall assist the State Veterinarian in determining the destination of all non-virgin female cattle sold after the previous year's trichomoniasis test. The State Veterinarian shall undertake all reasonable efforts to notify the recipients of those cattle.

(13) Except as otherwise provided in this section, the owner of an infected herd shall not lease or transfer ownership of any bull, cow, or heifer that is 12 months of age or older from the herd during a period in which the herd is under quarantine.

**R58-21-~~[6]~~7. Trichomoniasis - Rules - Non-compliance.**

(1) Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with ~~[T]~~Trichomoniasis, other than to slaughter, without declaring their disease status shall be

subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

(2) After May 15 each year, owners of ~~[a]~~untested bulls will be fined \$1,000.00 per violation.

(3) Regardless of the time of year, ~~[O]~~owners of untested bulls that have been exposed to female cattle will be fined \$1,000.00 per violation~~[- regardless of the time of year].~~

(4) Owners of any dairy bull that has been exposed to female cattle or bison from other herds will be fined \$1,000.00 per violation.

(5) Owners receiving a citation shall test their bull and provide proof of the testing to the department within 30 days of receipt of the citation or an additional penalty or fine may be levied.

**KEY: disease control, trichomoniasis, bulls, cattle**

**Date of Enactment or Last Substantive Amendment: ~~[June 14, 2017]~~2021**

**Notice of Continuation: December 26, 2019**

**Authorizing, and Implemented or Interpreted Law: 4-31-21**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R156-1	Filing No. 53292

**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>
Deborah Blackburn	801-530-6060	deborahblackburn@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R156-1. General Rule of the Division of Occupational and Professional Licensing
<b>3. Purpose of the new rule or reason for the change:</b>
The Division of Occupational and Professional Licensing (Division) is filing these proposed amendments to clarify and update this rule and to implement certain statutory changes made by H.B. 10, H.B. 285, H.B. 313, H.B. 455, and S.B. 23, and S.B. 201 passed in the 2020 General Session.

**4. Summary of the new rule or change:**

Extensive nonsubstantive formatting changes are made throughout all sections. In addition, substantive changes are made to the following sections:

Section R156-1-102 definitions are updated to remove references to "diversion" per H.B. 285 (2020).

Section R156-1-106 is amended in its entirety to clarify the procedures for requesting licensee lists from the Division.

Section R156-1-109 is amended to update the persons designated to serve as presiding officers. A Department of Commerce ALJ or licensed Administrative attorney is designated as the presiding officer for conducting Division citation hearings, and the Utah Professionals Health Program (UPHP) manager is designated as the presiding officer for conducting informal adjudicative proceedings involving the UPHP, including approval or denial of a licensee's request for entry into UPHP. References to the Residence Lien Recovery Fund Advisory Board are deleted per H.B. 10 (2020).

Section R156-1-110 is amended to clarify the requirements for service of an investigative subpoena.

Section R156-1-301 is amended to clarify that the filing date of license applications is the date the approval is input into the Division's electronic licensure database.

New Section R156-1-301.7 is added in accordance with S.B. 23 (2020) to clarify the standards for Division notification by email.

Section R156-1-308a is amended to establish: 1) that the renewal date for the new state certified veterinary technician certification created by H.B. 455 is September 30 even years, and 2) that the Division may extend the final two-year term for a funeral service intern license up to two years upon satisfactory evidence of reasonable progress towards licensure and of a circumstance of hardship beyond the control of the licensee that prevented completion of the licensure process.

Section R156-1-308c is amended per S.B. 23 (2020) to update renewal of license procedures to allow renewal notices to be sent to licensees by email, and to clarify that a notification sent by the Division to the most recent mailing address or email address provided to the Division constitutes legal notice.

Section R156-1-308e regarding reinstatement dates for a dissolved entity is amended to update the rule to conform to Subsection 58-1-308(2).

Section R156-1-310 is updated to provide that agency review is not available for a Division order or determination for an application filed under Section 58-1-310.

Sections R156-1-404a through R156-1-404d are deleted in their entirety in accordance with H.B. 285 (2020), which

repealed Section 58-1-404 regarding the Division's Diversion program and enacted Title 58, Chapter 4a, Utah Health Professionals Program.

Section R156-1-501 regarding unprofessional conduct is updated to: 1) delete the outdated 2004 Model Policy for the Use of Controlled Substance for the Treatment of Pain, and the outdated 2013 Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain, and replace them with the new "Guidelines for the Chronic Use of Opioid Analgesics" adopted as policy April 2017 by the Federation of State Medical Boards; and 2) add as unprofessional conduct the violation of a "program contract" under the Utah Professionals Health Program.

Section R156-1-502 administrative penalties fine table is updated to provide midrange fines for violating Subsection 58-1-501(1)(g) (aiding or abetting any other person to violate any statute, rule, or order regulating an occupation or profession under Title 58). The midrange fines are \$500 for a first offense and \$1,000 for a second offense.

Sections R156-1-602 and R156-1-603 are amended to conform the rule to statutory changes made by H.B. 313 (2020), Telehealth Parity Amendments.

Google Meets information for February 25, 2021 rule hearing before the Division:

Join with Google Meet: [meet.google.com/mms-abwd-mxu](https://meet.google.com/mms-abwd-mxu)  
Join by phone: (US) +1 657-529-2812 (PIN: 172567001)

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

None of these proposed amendments are expected to impact state government revenues or expenditures because the changes merely update global Division administration standards, make formatting changes for clarity, and update the rules to implement statutory requirements from the bills passed in the 2020 General Session, and do not impose additional cost or savings beyond what was anticipated during the legislative process.

**B) Local governments:**

No impact is expected to local governments because these changes will not affect local governments' practices or procedures.

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

None of these proposed amendments are expected to impact small businesses' revenues or expenditures because the changes merely update global Division administration standards, make formatting changes for clarity, and update the rules to implement statutory requirements from the bills passed in the 2020 General

Session, and do not impose additional cost or savings beyond what was anticipated during the legislative process.

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

None of these proposed amendments are expected to impact non-small businesses' revenues or expenditures because the changes merely update global Division administration standards, make formatting changes for clarity, and update the rules to implement statutory requirements from the bills passed in the 2020 General Session, and do not impose additional cost or savings beyond what was anticipated during the legislative process.

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

The Division estimates that approximately two funeral service interns per year who are in their final two-year term under Title 58, Chapter 9, may experience a fiscal benefit from the proposed amendment that clarifies that the Division may extend a final two-year term up to two years upon satisfactory evidence of reasonable progress towards licensure and a circumstance of hardship beyond the control of the licensee, as these persons will not be forced to stop working because of the hardship and will have a chance to continue working towards their funeral service director license and in their career of choice. However, the exact benefit cannot be estimated because it will depend on the individual circumstances of hardship and the choices of each individual licensee. None of the remaining amendments are expected to impact other persons because the changes merely update global Division administration standards, make formatting changes for clarity, and update the rules to implement statutory requirements from the bills passed in the 2020 General Session, and do not impose additional cost or savings beyond what was anticipated during the legislative process.

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

None of the proposed amendments are expected to impose compliance costs on affected persons because the changes merely update global Division administration standards, make formatting changes for clarity, and update the rules to implement statutory requirements from the bills passed in the 2020 General Session, and do not impose additional costs beyond what was anticipated during the legislative process.

**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 Executive Director of the Department of Commerce, Margaret W. Busse, 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 proposes amendments to the Division of Occupational and Professional Licensing Act Rule. The Division is filing these proposed amendments to clarify and update the rule and to implement certain statutory changes made by H.B. 10, H.B. 285, H.B. 313, H.B. 455, S.B. 23, and S.B. 201 (2020). Among the changes are changes to the diversion program, hearing officer designation, investigative subpoena powers, notification procedures, and telehealth. Further, the Division has made minor amendments to update references and clarify this rule.

Small Businesses (less than 50 employees);  
The proposed amendments are not expected to impact small businesses' revenues or expenditures because the changes merely update the global Division administration standards and make formatting changes for clarity.

Further, no fiscal impact is expected for small businesses over and above any fiscal impact described in the legislative fiscal notes for H.B. 10, H.B. 285, H.B. 313, H.B. 455, S.B. 23, and S.B. 201 (2020) as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-small businesses (50 or more employees):  
 These amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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

Margaret W. Busse, Interim 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 58-1-308	Subsection 58-1-501(2)
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**Incorporations by Reference Information**

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

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	Guidelines for the Chronic Use of Opioid Analgesics (updates)
<b>Publisher</b>	Federation of State Medical Boards
<b>Issue, or version</b>	April 2017

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	Model Policy for the Use of Controlled Substances for the Treatment of Pain (deletes)
<b>Publisher</b>	Federation of State Medical Boards
<b>Issue, or version</b>	2004

**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>	03/17/2021	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
02/25/2021	9:00 AM	Rule hearing will be held electronically before the Division. See Google Meets information in Box #4 above.

**10. This rule change MAY become effective on:**

03/24/2021  
 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>	Mark B. Steinagel, Director	<b>Date:</b>	01/26/2021
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**R156. Commerce, Occupational and Professional Licensing. R156-1. General Rule of the Division of Occupational and Professional Licensing.**

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, Occupations and Professions, as used in Title 58, Occupations or Professions or ~~[this rule]~~ in this Title R156, Occupational and Professional Licensing, the following rule definitions supplement the statutory definitions:

(1)(a) "Active and in good standing" means a licensure status ~~[which]~~ that allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(b) A license that has been placed on probation subject to terms and conditions is not active and in good standing.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

- (a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
- (b) dishonest or selfish motive;
- (c) pattern of misconduct;
- (d) multiple offenses;
- (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
- (f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including

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creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license:

(a) issued to a licensee in error, such as where a license is issued to an applicant:

(i) whose payment of the required application fee is dishonored when presented for payment;

(ii) who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards;

(iii) who has been issued the wrong classification of licensure; or

(iv) due to any other error in issuing a license; or

(b) not issued erroneously, but where subsequently the licensee fails to maintain the ongoing qualifications for licensure, when such failure is not otherwise defined as unprofessional or unlawful conduct.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, ~~which~~ that serve as the basis to consider a licensee for inclusion in the ~~[diversion program]~~ Utah Professionals Health Program authorized in ~~[Section 58-1-404]~~ Title 58, Chapter 4a, Utah Professionals Health Program.

(5) "Conditional licensure" means an interim non-adverse licensure action, in which a license is issued to an applicant for initial, renewal, or reinstatement of licensure on a conditional basis in accordance with Section R156-1-308f, while an investigation, inspection, or audit is pending.

(6) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure, or relicensure.

(7)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) ~~through (2)]~~ or (b).

(b) "Disciplinary action"~~[7]~~ as used in Subsection 58-1-401(~~5]~~6):

~~(i) means an adverse action initiated by the Division; and~~

~~(ii) does not [ , shall not be construed to ] mean an adverse licensure action taken by the Division in response to an application for licensure. [ Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.~~

~~(8) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.~~

~~(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.]~~

~~(10]~~8) "Duplicate license" means a license reissued to replace a license ~~which~~ that has been lost, stolen, or mutilated.

~~(11]~~9) "Emergency review committee[s]" means an emergency adjudicative proceedings review committee[s] created by the Division under the authority of Subsection 58-1-108(2).

~~(12]~~10) "Expire" or "expiration" means the automatic termination of a license ~~which~~ that occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license ~~which~~ that supersedes an old license, including a license ~~which~~ that:

(A) replaces a temporary license;

(B) replaces a student or other interim license ~~which~~ that is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

~~(13]~~11) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Section[s] 58-1-305 and Section R156-1-305.

~~(14]~~12) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

~~(15]~~13) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

~~(16]~~14) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions, or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

~~(17]~~15) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation ~~and~~ or profession, ~~provided such inexperience~~ that is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;



(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii) remorse.

(b) The following factors may not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

(v) complainant's recommendation as to sanction; ~~and~~ or

(vi) in an informal disciplinary proceeding brought pursuant to Subsections 58-1-501(2)(c), 58-1-501(2)~~(d)~~, or ~~Subsections~~ R156-1-501(1) through (5):

(A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;

(B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;

(C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and

(D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

~~(18)~~16 "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) ~~through (2)~~ or (d).

~~(19)~~17 "Peer committee[s]" mean an advisory peer committee[s] to a board[s] that is created by the legislature in Title 58, Occupations and Professions, or created by the Division under the authority of Subsection 58-1-203(1)(f).

~~(20)~~18 "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

~~(21)~~19 "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

~~(22)~~20 "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

~~(23)~~21 "Reinstate" or "reinstatement" means to:

(a) activate an expired license; or

(b) ~~to~~ restore a license ~~which~~ that is restricted~~;~~ as defined in Subsection ~~(26)~~24(b), ~~or is~~ suspended, or ~~placed~~ on probation, to a less~~er~~ restrictive license or an active in good standing license.

~~(24)~~22 "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

~~(25)~~23 "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection ~~(25)~~24(a), placed on a license issued to an applicant for licensure.

~~(26)~~24 "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

~~(27)~~25 "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.

~~(28)~~26 "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

~~(29)~~27 "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

~~(30)~~28 "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

~~(31)~~29 "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-501.

~~(32)~~30 A "Warning or final disposition letter[s] that does~~which do~~ not constitute disciplinary action" as used in Subsection 58-1-108(3) means a letter[s] that does ~~which do~~ not contain findings of fact or conclusions of law and ~~do~~ does not constitute a reprimand, but ~~which~~ that may address ~~any or all~~ one or more of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; ~~and~~ or

(d) disposition of Division concerns.

#### **R156-1-102a. Global Definitions of Levels of Supervision.**

(1) In accordance with Subsection 58-1-106(1)(a), except~~Except~~ as otherwise provided by statute or rule, ~~the~~this section's global definitions of levels of supervision ~~herein~~ shall apply to supervision terminology used in Title 58, Occupations and Professions, and this Title R156, and shall be referenced and used~~;~~ to the extent practicable~~;~~ in those statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, ~~all~~ unlicensed personnel ~~specifically~~ allowed to practice a regulated occupation or profession ~~are required to~~ shall practice under an appropriate level of supervision as defined ~~herein~~ in this section, as specified by the licensing act or licensing act rule governing ~~each~~ that occupation or profession.

(3) Except as otherwise provided by statute or rule, ~~a~~the license classification[s] required to practice under supervision shall practice under an appropriate level of supervision defined ~~herein~~ in this section, as specified by the licensing act or licensing act rule governing ~~each~~ that occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

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(ii) is present ~~[with]~~in the facility or located on the same premises where~~[in which]~~ the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by ~~[telephone, radio]~~electronic or ~~[some]~~other means, without regard to whether the supervising licensee is present in the facility or located on the same premises ~~[as]~~where the person being supervised is providing services;~~[- and]~~

(iii) can provide any necessary consultation within a reasonable period of time; and

~~\_\_\_\_\_~~ (iv) personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied ~~[any]~~the requirements to act as a supervisor and has agreed to ~~[provide supervision of]~~supervise an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with ~~[the provisions of]~~this chapter.

**R156-1-103. 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, Occupations and Professions.

**R156-1-106. Division - Duties, Functions, and Responsibilities.**

~~\_\_\_\_\_~~ (1) ~~In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized:~~

~~\_\_\_\_\_~~ (a) ~~responses to requests from another governmental entity, government managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;~~

~~\_\_\_\_\_~~ (b) ~~responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;~~

~~\_\_\_\_\_~~ (c) ~~responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;~~

~~\_\_\_\_\_~~ (d) ~~responses to universities, schools, or research facilities for the purposes of research;~~

~~\_\_\_\_\_~~ (e) ~~responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and~~

~~\_\_\_\_\_~~ (f) ~~responses to requests from a person preparing for, participating in, or responding to:~~

~~\_\_\_\_\_~~ (i) ~~a national, state or local emergency;~~

~~\_\_\_\_\_~~ (ii) ~~a public health emergency as defined in Section 26-23b-102; or~~

~~\_\_\_\_\_~~ (iii) ~~a declaration by the President of the United States or other federal official requesting public health related activities.~~

~~\_\_\_\_\_~~ (2) ~~In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number~~

~~of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.~~

~~\_\_\_\_\_~~ (3) ~~In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.]~~

~~\_\_\_\_\_~~ (1) Each person requesting a licensee list pursuant to Section 58-1-106 and this section shall apply to the Division upon a form prescribed by the Division in which the requester:

~~\_\_\_\_\_~~ (a) agrees to use the information received only for he purposes for which the requester is authorized;

~~\_\_\_\_\_~~ (b) agrees to not disclose the information received to other persons;

~~\_\_\_\_\_~~ (c) agrees not to use the information received for advertising or solicitation;

~~\_\_\_\_\_~~ (d) attests that the requester shall adhere to the restrictions of this section; and

~~\_\_\_\_\_~~ (e) acknowledges that the information received is a DOPL record under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), and that a violation of Section 58-1-106 or this section may subject the requester to criminal penalties and other remedies under GRAMA.

~~\_\_\_\_\_~~ (2) In accordance with Subsections 58-1-106(1)(k) and 58-1-106(2), the Division may provide the following requesters a list of multiple licensees, and include licensee home telephone numbers, home addresses, or email addresses:

~~\_\_\_\_\_~~ (a) a governmental entity, including another state or territory or its regulatory agency;

~~\_\_\_\_\_~~ (b) a government-managed corporation;

~~\_\_\_\_\_~~ (c) a political subdivision;

~~\_\_\_\_\_~~ (d) the federal government;

~~\_\_\_\_\_~~ (e) a party to a prelitigation proceeding convened by the Division under Title 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act;

~~\_\_\_\_\_~~ (f) a medical reserve corps, public safety authority, host entity, unified command, or other person concurrently engaged with a person described in Subsections (2)(a) through (d), for the sole purpose of preparing for, participating in, or responding to an emergency described in Section 58-1-307;

~~\_\_\_\_\_~~ (g) a research university or regional university in the Utah System of Higher Education, for the sole purpose of conducting research; or

~~\_\_\_\_\_~~ (h)(i) the following persons, for the sole purpose of providing licensees continuing education that meets the requirements of Title 58, Occupations and Professions, and this Title R156:

~~\_\_\_\_\_~~ (A) an occupational or professional association;

~~\_\_\_\_\_~~ (B) a non-profit regulatory association in which the Division holds membership;

~~\_\_\_\_\_~~ (C) a private continuing education organization;

~~\_\_\_\_\_~~ (D) a trade union; or

~~\_\_\_\_\_~~ (E) a school of higher education and training such as a university, college, technical college, or career and technical school;

~~\_\_\_\_\_~~ (ii) As used in Subsection (2)(g), "providing licensees continuing education" does not mean providing general information, learning opportunities, marketing, or outreach, including the following:

~~\_\_\_\_\_~~ (A) volunteer opportunities, even if the volunteer would receive training and practical education;

(B) involvement in advocating for legislation;  
(C) involvement in labor organizing issues;  
(D) solicitations or recruitment for membership; or  
(E) continuing education advertisements in a newsletter or other communication issued by the requester that also contains non-continuing education advertisements or other information, unless:

(I) the newsletter is issued by a Utah non-profit occupational or professional association or trade union; and

(II) the Division determines the newsletter's primary focus is communicating educational articles and information about continuing education, and only incidentally contains advertisements and solicitations for membership.

(3)(a) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee under Subsection 58-1-106(3)(a) shall consist of the individual's:

(i) full legal name;  
(ii) mailing address;  
(iii) email address;  
(iv) daytime phone number; and  
(v) current positive identification.

(b) "Positive identification" for this section means:

(i) one of the following photo identification issued by a foreign or domestic government:

(A) driver's license;  
(B) non-driver identification card;  
(C) passport;  
(D) military identification; or  
(E) concealed weapons permit; or

(ii) if the individual does not have government-issued identification, alternative evidence of the individual's identity as determined appropriate by the Division, if the Division documents on the requester's application how the individual was positively identified.

(c) In accordance with Subsections 58-1-106(3)(a) and (b), the Division may deny an individual's request for an address, email address, or telephone number of a licensee if the Division determines the reason for the request is an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

#### **R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.**

(1) The rules and sections in this Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58, Occupations and Professions.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of [all] occupations and professions regulated in Title 58, Occupations and Professions.

(3) The [provisions of the] other rules in this Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in this Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

#### **R156-1-109. Presiding Officers.**

In accordance with Subsection 63G-4-103(1)(h)[~~7~~] and Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, Utah Construction Trades Licensing Act, by the Construction Services Commission, the

[designation of] following are designated as the Division's presiding officers [~~is clarified or established as follows~~]:

(1)(a) The Division Regulatory and Compliance Officer is [~~designated as~~] the presiding officer for issuance of:

(i) notices of agency action; and  
(ii) [~~for issuance of~~] notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action.

(b) If [~~provided that if~~] the Division Regulatory and Compliance Officer is unable to [~~so~~] serve [~~for any reason~~], an alternate presiding officer [~~replacement~~] specified in writing by the Director shall serve [~~is designated as the alternate presiding officer~~].

(2) In accordance with Subsections 58-1-109(2) and 58-1-109(4) [~~are clarified with regard to defaults as follows~~. Unless otherwise specified in writing by the Director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, ~~a~~ ~~[d]~~ Department administrative law judge is [~~designated as~~] the presiding officer for entering an order of default against a party [~~for~~] and conducting [~~any~~] further proceedings necessary to complete the adjudicative proceeding, [~~and for~~] including issuing a recommended order to the Director or Construction Services Commission, ~~respectively~~], determining the discipline to be imposed, licensure action to be taken, relief to be granted, [~~etc~~] or other appropriate matters.

(3) Except as provided in Subsection (4) [~~or otherwise specified in writing by the Director~~], the presiding officers for adjudicative proceedings before the Division are as follows:

(a) [~~Director~~] The Director [~~shall be~~] is the presiding officer for the following adjudicative proceedings, however resolved, including stipulated settlements and hearings:

(i) formal adjudicative proceedings under: [~~described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (e), however resolved, including stipulated settlements and hearings; and~~]

(A) Subsection R156-46b-201(1)(b), request for declaratory order conducted as a formal adjudicative proceeding;

(B) Subsection R156-46b-201(2)(a), formal disciplinary proceeding for revocation, suspension, restricted licensure, probationary licensure, cease and desist order or administrative fine not through citation, or public reprimand;

(C) Subsection R156-46b-201(2)(b), unilateral modification of disciplinary order; and

(D) Subsection R156-46b-201(2)(c), termination of diversion agreement or program contract under Section 58-4a-107; and

(ii) informal adjudicative proceedings under: [~~described in Subsections R156-46b-202(1)(g), (i), (l), (m), (o), (p), and (r), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.~~]

(A) Subsection R156-46b-202(1)(d), payment of approved claim against the Residence Lien Recovery Fund;

(B) Subsection R156-46b-202(1)(e)(iii), approval or denial of request for modification of a disciplinary order;

(C) Subsection R156-46b-202(1)(e)(v), approval or denial of request for correction of other than procedural or clerical mistakes;

(D) Subsection R156-46b-202(1)(h), request for declaratory order conducted as an informal adjudicative proceeding;

(E) Subsection R156-46b-202(1)(i), disciplinary sanction imposed in a stipulation or memorandum of understanding with a licensure applicant;

(F) Subsection R156-46b-202(1)(j), other requests for agency action not designated as a formal adjudicative proceeding;

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(G) Subsection R156-46b-202(2)(a), nondisciplinary proceeding that results in cancellation of licensure;

(H) Subsection R156-46b-202(2)(b)(ii), disciplinary proceeding against a controlled substance licensee;

(I) Subsection R156-46b-202(2)(c), disciplinary proceeding concerning violation of an order governing a license; and

(J) Subsection R156-46b-202(2)(d), disciplinary proceeding limited to Subsections 58-1-501(2)(c) or (d) or R156-1-501(1) through (5).

(b) [Bureau Managers or Program Coordinators. Except for Title 58, Chapter 55, the]The bureau manager or program coordinator over the occupation or profession or program involved [shall be]is the presiding officer for:

(i) formal adjudicative proceedings [described in]under Subsection R156-46b-201(1)(c), for [purposes of]determining [whether]if a request for a board of appeal is properly filed [as set forth in]under Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings [described in]under:

(A) Subsection R156-46b-202(1)(a)[ through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii)], approval or denial of an application for initial licensure, renewal, reinstatement, inactive or emeritus status, tax credit certificate, or criminal history determination;

(B) Subsection R156-46b-202(1)(b), favorable or unfavorable criminal history determination;

(C) Subsection R156-46b-202(1)(e)(i), approval or denial of request to surrender licensure;

(D) Subsection R156-46b-202(1)(e)(iv), approval or denial of request for correction of procedural or clerical mistakes;

(E) Subsection R156-46b-202(2)(b)(iii), disciplinary proceeding against a contract security company or armored car company for failure to replace a qualifier;

(F) Subsection R156-46b-202(2)(b)(iv), disciplinary proceeding against a hunting guide or outfitter for unprofessional conduct under Subsections R156-79-502(12) or R156-79-502(14); and

(G) Subsection R156-46b-202(2)(e), disciplinary proceeding concerning evaluation or verification of documentation regarding renewal requirements.

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the technician's name [of the licensing technician or program technician provided]if:

(A) the bureau manager or program coordinator approves the wording in advance; and[wording of the order has been approved in advance by the bureau manager or program coordinator and provided.]

(B) the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the [licensing technician's or program]technician's signature.

(c) [Citation Hearing Officer. The Division Regulatory and Compliance Officer or other citation hearing officer designated in writing by the Director shall be]A Department administrative law judge licensed in good standing with the Utah State Bar, or a Department administrative employee licensed in good standing with the Utah State Bar as designed by a Department administrative law judge, is the presiding officer for [the adjudicative proceeding described in]informal citation hearings under Subsection R156-46b-202(1)(k)g.

(d)(i) [Uniform Building Code Commission. ]The Uniform Building Code Commission [shall be]is the presiding officer

for [the]formal adjudicative proceedings [described in]under Subsection R156-46b-202(1)(e)c for convening a board of appeal under Subsection 15A-1-207(3), [for]serving as fact finder at [any]the evidentiary hearing[ associated with a board of appeal], and [for]entering the final order[ associated with a board of appeal].

(ii) A[ ] Department administrative law judge shall conduct the hearing as [perform the role]specified in Subsection 58-1-109(2).

(e) [Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.]

(f) Residence Lien Recovery Fund Manager. ]The Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the Director [shall be]is the presiding officer for [the]informal adjudicative proceedings [described in]under Subsection R156-46b-202(1)(e)c, for approval or denial of [an application for a tax credit certificate]claims against the Residence Lien Recovery Fund.

(f)(i) The Utah Professionals Health Program manager is the presiding officer for informal adjudicative proceedings under:

(A) Subsection R156-46b-202(1)(e)(ii), entry into and participation in the Utah Professionals Health Program; and

(B) Subsection R156-46b-202(1)(f), matters relating to the Utah Professionals Health Program that do not involve termination under Section 58-4a-107.

(ii) If the Utah Professionals Health Program manager is unable to serve, an alternate presiding officer specified in writing by the Director shall serve.

(4) [Unless otherwise specified in writing by the Construction Services Commission, the]The presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, Utah Construction Trades Licensing Act, are [established or clarified]as follows:

(a) [Commission. ](i)(A) The Construction Services Commission [shall be]is the presiding officer for [all]adjudicative proceedings under Title 58, Chapter 55, Utah Construction Trades Licensing Act, however resolved including stipulated settlements and hearings, except as otherwise [delegated by the Commission in writing or as otherwise provided]specified in this rule[; provided, however, that all orders].

(B) Orders adopted by the Commission as [a]presiding officer shall require the concurrence of the Director.

(ii) [Unless otherwise specified in writing by the Construction Services Commission, the]The Construction Services Commission is [designated as]the presiding officer:

(A) for informal adjudicative proceedings [described in] Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (e), and (d), however resolved, including memoranda of understanding and stipulated settlements;]under:

(I) Subsection R156-46b-202(1)(e)(iii), approval or denial of request for modification of a disciplinary order;

(II) Subsection R156-46b-202(1)(e)(v), approval or denial of request for correction of other than procedural or clerical mistakes;

(III) Subsection R156-46b-202(1)(h), request for declaratory order conducted as an informal adjudicative proceeding;

(IV) Subsection R156-46b-202(1)(i), disciplinary sanctions imposed in a stipulation or memorandum of understanding with a licensure applicant;

(V) Subsection R156-46b-202(1)(j), other requests for agency action not designated as a formal adjudicative proceeding;

(VI) Subsection R156-46b-202(2)(b)(i), disciplinary proceedings against a contractor, plumber, electrician, or alarm company;

(VII) Subsection R156-46b-202(2)(c), disciplinary proceedings concerning violations of an order governing a license; and

(VIII) Subsection R156-46b-202(2)(d), disciplinary proceeding limited to Subsections 58-1-501(2)(c) or (d) or R156-1-501(1) through (5);

(B) to serve as fact finder and adopt orders in formal evidentiary hearings ~~[associated with]~~for adjudicative proceedings involving persons licensed ~~[as]~~or required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(C)(I) to review recommended orders of a board, an administrative law judge, or other ~~[designated]~~presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, and to adopt an order of its own~~[-]~~; and

(II) [In]in adopting its order, the Construction Services Commission may accept, modify or reject the recommended order.

~~(iii) [If the Construction Services Commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.~~

~~(iv)(A) Orders of the Construction Services Commission shall address [all]the issues before the Construction Services Commission and shall be based upon the record developed in an adjudicative proceeding conducted by the Construction Services Commission.~~

(B) [In cases in which]If the Commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the Construction Services Commission shall consist of the findings of fact, conclusions of law, and recommended order submitted [to the Commission]by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

~~(iv)(A) The Construction Services Commission or its designee shall submit an adopted order[s] to the [d]Director for the Director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier.~~

(B) An adopted order [shall be deemed]is issued and [constitute]becomes a final order upon the concurrence of the Director.

(v)(i)(A) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order [of the Construction Services Commission or its designee], the Director or the Director's designee shall return the adopted order to the Construction Services Commission or its designee with the reasons [set forth]in writing [for refusing to concur].

(B) The Construction Services Commission or its designee shall reconsider the returned adopted order and resubmit an adopted order to the Director or the Director's designee, whether or not modified, within 30 days of the date of the initial or subsequent return.

(C) The Director or the Director's designee shall consider the resubmitted [Commission's resubmission of an]adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order.

(D) [Provided]If the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Construction Services

Commission or its designee ~~[and]with~~ the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

(vi)(i) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(vii)(i) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's ~~[D]designee[-]~~ and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or ~~[the Director's]~~designee within the Department.

~~(viii) The content of [all]orders shall comply with [the requirements of Subsection]Sections 63G-4-203(1), [and Sections] 63G-4-208, and 63G-4-209.~~

~~(b) [Director.]The Director or the Director's designee is [designated as]the presiding officer for the concurrence role [except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on] in disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), R156-46b-202(2)(c), and R156-46b-202(2)(d) as required by Subsection 58-55-103(1)(b)(iv).~~

~~(c) [Administrative Law Judge. Unless otherwise specified in writing by the Construction Services Commission, a]A Department administrative law judge is [designated as]the presiding officer to conduct formal adjudicative proceedings before the Construction Services Commission and its advisory boards, as specified in Subsection 58-1-109(2).~~

~~(d) [Bureau Manager. Unless otherwise specified in writing by the Construction Services Commission, the responsible]The bureau manager is [designated as]the presiding officer [for conducting]to conduct informal adjudicative proceedings [specified]under:~~

~~(i) [in]Subsections R156-46b-202(1)(a) [through (d), (h), and (n)](i) through (1)(a)(iv), approval or denial of an application for initial licensure, renewal, reinstatement, inactive or emeritus status;~~

~~(ii) Subsection R156-46b-202(1)(a)(vi), approval or denial of an application for criminal history determination;~~

~~(iii) Subsection R156-46b-202(1)(b), favorable or unfavorable criminal history determination;~~

~~(iv) Subsection R156-46b-202(1)(e)(i), approval or denial of request to surrender licensure;~~

~~(v) Subsection R156-46b-202(1)(e)(iv), approval or denial of request for correction of procedural or clerical mistakes; and~~

~~(vi) Subsection R156-46b-202(2)(e), disciplinary proceeding concerning evaluation or verification of documentation regarding renewal requirements.~~

~~(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician [provided]if:~~

~~(i) the bureau manager approves the wording in advance; and [of the order has been approved in advance by the bureau manager and provided]~~

~~(ii) the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.~~

~~(f) [Plumbers Licensing Board.]Except as [set forth]specified in Subsection (c) [or as otherwise specified in writing by the commission], the Plumbers Licensing Board is [designated as]the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings [associated with]for adjudicative~~

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proceedings involving persons licensed as or required to be licensed as plumbers.

(g) ~~[Electricians Licensing Board.—]~~Except as ~~[set forth]~~specified in Subsection (c) ~~[or as otherwise specified in writing by the commission]~~, the Electricians Licensing Board is ~~[designated as]~~the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings ~~[associated with]~~for adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) ~~[Alarm System Security and Licensing Board.—]~~Except as ~~[set forth]~~specified in Subsection (c) ~~[or as otherwise specified in writing by the commission]~~, the Alarm System Security and Licensing Board is ~~[designated as]~~the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings ~~[associated with]~~for adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

**R156-1-110. Issuance of Investigative Subpoenas.**

(1)(a) A ~~[H]~~ request[s] for a subpoena[s] in ~~[conjunction with]~~a Division investigation ~~[made]~~pursuant to Subsection 58-1-106(1)(c) ~~[;]~~ shall be made in writing to the investigative subpoena authority and ~~[shall be]~~accompanied by an original of the proposed subpoena.

(a) Each request ~~[Requests to the investigative subpoena authority]~~ shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including:

- (i) the factual basis for the request ~~[;]~~;
- (ii) the relevance and necessity of the particular person ~~[;]~~ and evidence ~~[, documents, etc.]~~ to the investigation ~~[;]~~; and
- (iii) an explanation of why the subpoena is directed to the ~~[particular]~~ person upon whom it is to be served.

(b) ~~[c]~~ An approved subpoena ~~[Approved subpoenas]~~ shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

- (3)(a) Service may be made:
  - (i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and
  - (ii) personally or on the agent of the person being served.
- (b) If a party is represented by an attorney, service shall be made on the attorney.

(4)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

- (b) Service by mail is complete upon mailing.
- (c) Service may be accomplished by electronic means.
- (d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays; otherwise, service is complete on the next business day.

(5)(a) Each ~~[There shall appear on all]~~ investigative subpoena[s] shall have a certificate of service.

(b) The certificate of service may be a separate form or may be stamped on the subpoena.

(c) The person serving the subpoena shall complete the certificate of service for both the served copy and the copy kept for the Division files.

(6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

(a) A motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than ten days after service of the investigative subpoena.

(b) A response by the Division to a motion to quash or modify an investigative subpoena shall be filed with and served upon the subpoena authority no later than five business days after receipt of a motion to quash or modify an investigative subpoena.

(c) No final reply by the recipient of an investigative subpoena who files a motion to quash or modify shall be permitted.

**R156-1-111. Qualifications for Tax Certificate - Definitions - Application Requirements.**

(1) ~~[In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:~~

(a) "Psychiatrist" ~~[, as defined]~~ under Subsection 58-1-111(1)(d), ~~[is further defined to]~~ includes a licensed physician who is board eligible or board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS) ~~[;]~~ and

(b) ~~[Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently]~~ "previously or currently board certified in psychiatry" means board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(2) An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

- (a) the original application made available on the Division's website, containing the signed attestation of compliance; and
- (b) ~~[any]~~ additional documentation that may be required by the Division to verify the applicant's representations made in the application.

**R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act ~~[Compliance with]~~ and Utah Administrative Procedures Act - No ~~[Provision for]~~ Per Diem and Expenses.**

(1) The executive director shall appoint the members of peer or advisory committees established under this Title 58, Occupations and Professions, or Title R156.

(2)(a) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be ~~[for]~~ four years.

(b) The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that ~~they~~ ~~[the terms of committee members]~~ are staggered so that approximately half of the peer or advisory committee is appointed on ~~[every]~~ two year[s] cycles.

(3) ~~[No]~~A peer or advisory committee member may not serve more than two full consecutive terms, and ~~[no]~~a member who ceases to serve may not serve again ~~[serve on the peer or advisory committee]~~ until after the expiration of two years from the date of cessation of service.

(4)(a) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term.

(b) After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5)(a) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including ~~[the]~~attendance at ~~[peer committee]~~ meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section.

(b) After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings ~~[shall]~~may only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act ~~[in]~~on behalf of the peer or advisory committee.

(9)(a) Peer or advisory committees shall annually designate one of their members to serve as chair~~[peer or advisory committee chairman]~~.

(b) The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with ~~[the procedures and requirements of]~~Title 52, Chapter 4, Open and Public Meetings Act~~[, in their meetings]~~.

(11) Peer or advisory committees shall comply with ~~[the procedures and requirements of]~~Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58, Occupations and Professions, or Title R156.

**R156-1-206. Emergency ~~[Adjudicative Proceeding]~~Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chair~~[man]~~ and Secretary - Open and Public Meetings Act ~~[and]~~ Utah Administrative Procedures Act - Per Diem and Expenses.**

(1) The ~~[chairman of the board]~~board chair for the profession of the person against whom an emergency adjudicative proceeding~~[action]~~ is proposed under Sections 63G-4-502 and 58-1-108 may appoint the members of the emergency review committee~~[s]~~ on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the ~~[chairman of a board]~~board chair, emergency review committees~~[committees]~~ shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

**R156-1-301. ~~[Application for Licensure]~~License Application - Filing Date - Applicable Requirements for Licensure - Issuance Date.**

(1) The filing date for an application for licensure ~~[shall be]~~is the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule, or order, the requirements for licensure ~~[applicable to an application for licensure shall be]~~are the requirements in effect on the filing date of the application.

(3) The issuance date for a license ~~[issued to an applicant for licensure shall be as follows:~~

~~(a) is the date the approval is input into the Division's electronic licensure database~~~~[for applications submitted and processed manually; or~~

~~(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System].~~

**R156-1-301.7. Change of Information - Notification.**

(1) Notification sent by email under Section 58-1-301.7 is complete on transmission if transmission is completed during normal business hours, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays, at the place receiving the notice; otherwise, notice is complete on the next business day.

(2) Notification by email may be accomplished by attachment to the email or in the body of the email, or both.

**R156-1-302. Consideration of ~~[Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.~~**

(1) In accordance with Section 58-1-401, this~~[This]~~ section applies in circumstances where an applicant or licensee:

(a) is not automatically disqualified from licensure pursuant to statute~~[a statutory provision]~~; and

(b)(i) has ~~[history that reflects negatively on the person's moral character, including]~~past unlawful or unprofessional conduct; or

(ii) as described in Subsection 58-1-401(2)(d), may be unable to practice the occupation or profession with reasonable skill and safety because of an illness, a substance use disorder or~~[has]~~ a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety, or welfare.

(2) In a circumstance described in Subsection~~[Section]~~ (1), the following factors are relevant to a licensing decision:

(a) aggravating circumstances, as defined in Subsection R156-1-102(2);

(b) mitigating circumstances, as defined in Subsection R156-1-102(~~[17]~~15);

(c) the degree of risk to the public health, safety or welfare;

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

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- (i) the current administrative status of the applicant or licensee;
- (j) results of previously submitted applications, for any regulated profession or occupation;
- (k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;
- (l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;
- (m) psychological evaluations; or
- (n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety, or welfare.

**R156-1-303. Temporary Licenses in Declared Disaster or Emergency.**

(1) In accordance with Section 53-2a-1203, a person[s] who provides services under this exemption from licensure, shall within 30 days of entry file a notice with the Division [as provided] under Subsection 53-2a-1205(1) using forms posted on the Division website[internet site].

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure [as provided] in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet [all] the normal requirements for [occupational or professional] licensure under [this title] Title 58, Occupations and Professions, unless:

- (a) prior to practicing after the declared disaster the person is issued a temporary license under [the provisions of] Subsection 58-1-303(1)(c); or
- (b) the person qualifies under another exemption from licensure.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, [except as provided in Subsection (2),] a licensee whose license is listed in Subsection (2) may [not] apply for inactive licensure status as provided in this section.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) architect;
- (b) audiologist;
- (c) certified public accountant emeritus;
- (d) state certified court reporter;
- (e) certified social worker;
- (f) chiropractic physician;
- (g) clinical mental health counselor;
- (h) clinical social worker;
- (i) contractor;
- (j) deception detection examiner;
- (k) deception detection intern;
- (l) dental hygienist;
- (m) dentist;
- (n) dispensing medical practitioner - advanced practice registered nurse;
- (o) dispensing medical practitioner - physician and surgeon;
- (p) dispensing medical practitioner - physician assistant;
- (q) dispensing medical practitioner - osteopathic physician and surgeon;

- (r) dispensing medical practitioner - optometrist;
- (s) dispensing medical practitioner - clinic pharmacy;
- (t) genetic counselor;
- (u) health facility administrator;
- (v) hearing instrument specialist;
- (w) landscape architect;
- (x) licensed advanced substance use disorder counselor;
- (y) marriage and family therapist;
- (z) naturopath[~~h~~]-naturopathic physician;
- (aa) optometrist;
- (bb) osteopathic physician and surgeon;
- (cc) pharmacist;
- (dd) pharmacy technician;
- (ee) physician assistant;
- (ff) physician and surgeon;
- (gg) podiatric physician;
- (hh) private probation provider;
- (ii) professional engineer;
- (jj) professional land surveyor;
- (kk) professional structural engineer;
- (ll) psychologist;
- (mm) radiology practical technician;
- (nn) radiologic technologist;
- (oo) security personnel;
- (pp) speech-language pathologist;
- (qq) substance use disorder counselor;[~~and~~]
- (rr) veterinarian; and
- (ss) state certified veterinary technician.

~~(3)(a) A licensee requesting[Applicants for] inactive licensure shall submit a verified application in a form prescribed by [apply to the Division in writing upon forms available from] the Division together with:~~

- ~~(i) [Each completed application shall contain] documentation [of] that the applicant meets the requirements for inactive licensure[. shall be verified by the applicant, and shall be accompanied by]; and~~
- ~~(ii) the appropriate fee.~~

~~(4)(b) If the licensee meets the[all] requirements [are met] for inactive licensure, the Division shall place the license on inactive status.~~

~~(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58, Occupations or Professions or this Title 156[rules which implement Title 58].~~

~~(6) An inactive licensee may [be activated] activate their license by submitting a verified application for activation in a form prescribed by the Division together with:[requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by-]~~

- ~~(a) the appropriate fee[-]; and~~
- ~~(b) unless otherwise provided in Title 58, Occupations and Professions or this Title 156, documentation that the inactive licensee meets current renewal requirements.~~

~~(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.~~



([§]Z) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with [the] Subsection 58-1-308(1):

TABLE  
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	December 31	even years
<del>Certified Court Reporter</del>	<del>May 31</del>	<del>even years</del>
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	December 31	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection	November 30	even years
Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator		
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner		
Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner		
Clinic Pharmacy	September 30	odd years
Electrician		
Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years

Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber, Restricted Associate Osteopathic Physician	May 31	even years
Outfitter <del>[Z]</del> and Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber		
Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement		
Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician	May 31	odd years
Radiologist Assistant		
Recreational Therapy		
Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
State Certified Court Reporter	May 31	even years
<del>State Certified Veterinary Technician</del>	<del>September 30</del>	<del>even years</del>
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

NOTICES OF PROPOSED RULES

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with~~ the [B]board that the licensee is making reasonable progress [is being made]toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with~~ the board that the licensee is making reasonable progress ~~[is being made]~~toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with the [B]board~~ that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e)(i) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years, and may be renewed.

(ii) The initial renewal date of March 31, 2017, is established for these license classifications, subject to ~~[the provisions of]~~Subsection R156-1-308c(7) to establish the length of the initial license period.

(f) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with the [B]board~~ that the licensee is making reasonable progress ~~[is being made]~~toward completing the required hours of supervised experience necessary for the next level of licensure.

(g) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(h) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(i)(A) Pursuant to Subsections 58-9-303(1) and (2), Funeral Service Intern licenses shall be issued for a two year term, and may be ~~[extended]~~issued for ~~[an]~~one additional two year term if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with~~ the board that the licensee is making reasonable progress ~~[is being made]~~toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(B) If before the expiration of the additional two-year term the licensee presents satisfactory evidence to the Division and the board that the licensee is still making reasonable progress towards licensure but a circumstance of hardship arose beyond the licensee's control to prevent the completion of the licensure process, the Division may extend that term for a period not to exceed two years.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with the [B]board~~ that the licensee is making reasonable progress ~~[is being made]~~toward passing the qualifying examination, but a circumstance arose beyond the licensee's control ~~[of the]~~licensee, to prevent the completion of the examination~~[-process]~~.

(k) Pharmacy technician trainee licenses shall be issued for a period of two years, and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with the [B]board~~ that the licensee is making reasonable progress ~~[is being made]~~toward completing the requirements necessary for the next level of licensure.

(l) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division ~~[and]in collaboration with~~ the board that the licensee is making reasonable progress ~~[is being made]~~toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure~~];~~, but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(m) Type I Foreign Trained Physician-Educator licenses ~~[will]shall~~ be issued initially for a one-year term and thereafter may be renewed on two year cycles~~[every two years following issuance]~~.

(n) Type II Foreign Trained Physician-Educator licenses ~~[will]shall~~ be issued initially for ~~[an annual basis]~~a one-year term and ~~[thereafter]~~may be renewed annually up to four times ~~[following issuance]~~if the licensee continues to satisfy the requirements ~~[described]~~in Subsection 58-67-302.7(3) and completes the ~~[required]~~continuing education requirements ~~[established under]~~in Section 58-67-303.

**R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.**

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period ~~[which]~~that is extended or shortened by more than one month to establish or reestablish a renewal period ~~[shall]~~may be increased or decreased proportionately.

**R156-1-308c. Renewal of Licensure Procedures.**

In accordance with Subsection 58-1-308(3), the~~[The]~~ procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license.~~[The notice shall include directions for the licensee to renew the license via the Division's website.]~~

(2) ~~[Except as provided in Subsection(4).]~~The Division shall send a renewal notice~~[s shall be sent by]~~:

(a) by mail deposited in the post office with postage prepaid, addressed to the ~~[last mailing address shown on the Division's automated license system]~~most recent mailing address provided to the Division by the licensee; or

(b) by email sent to the most recent email address provided to the Division by the licensee.

(3) In accordance with Subsection 58-1-301.7(1)2), ~~[each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last]~~a notification sent to the most recent mailing address or email

address provided to the Division by the licensee [~~mailing address furnished to the Division~~] constitutes legal notice.

(4) [~~If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.~~

(5) Renewal notices Each renewal notice shall:

(a) include directions for the licensee to renew the license via the Division's website;

(b) provide notify the licensee that the renewal requirements are outlined in the online renewal process, and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal; and

(c) notify the

(6) ~~Renewal notices shall advise each~~ licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires, and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) 5 A licensee [~~Licensees~~] licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew the [~~#~~] license.

#### **R156-1-308d. Waiver of Continuing Education Requirements - Credit for Volunteer Service.**

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of a [~~any~~] continuing education requirement [~~established~~] under this title, or an extension of time to complete [~~any~~] requirement, [~~on the basis that~~] if the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, [~~etc~~] or other reasonable cause.

(b) A [~~request must be submitted~~] licensee shall submit the request no later than the deadline for completing [~~any~~] the continuing education requirement.

(c) A licensee submitting a request has the burden of proof and [~~must~~] shall document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason that includes: [~~why. The explanation shall include~~]

(i) the extent and duration of the impediment[~~;~~];

(ii) the extent to which the licensee continued to be engaged in practice of [~~his~~] the licensee's profession[~~;~~];

(iii) the nature of the medical condition[~~;~~];

(iv) the location and nature of the humanitarian services[~~;~~];

(v) the geographical area where continuing education [~~is~~] was not available[~~, etc.~~]; and

(vi) other relevant information.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, [~~in order~~] to assure competent practice.

(f)(i) A licensee who receives [~~While a licensee may receive~~] a waiver from meeting the minimum continuing education requirements [~~the licensee~~] shall not be exempted from [~~the requirements of~~] Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities, and education of the licensee.

(ii) If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities, and education.

(2)(a) In accordance with Subsections 58-1-203(1)(g) and 58-55-302.5(2)(e)(i), the Division may grant continuing education credit to a licensee for volunteering as a subject-matter expert in the review and development of licensing exams for the licensee's profession.

(b) Subject to specific limitations established by rule by the Division[~~;~~] in collaboration with a licensing board[~~;~~] or the Construction Services Commission, this volunteer continuing education credit shall:

(i) apply to the license period or periods during which the volunteer service was provided;

(ii) be granted on a 1:1 ratio, meaning that for each hour of attendance, the licensee may receive one hour of credit;

(iii) be [~~deemed~~] "core,"[~~;~~] "classroom,"[~~;~~] or "live" credit, regardless of whether the licensee attended meetings in person or electronically; and

(iv) at the licensee's discretion, the whole[~~all~~] or part of the credit hours may be counted towards [~~any~~] law or ethics continuing education requirements.

(c) The licensee shall [~~be responsible for maintaining~~] maintain information with respect to the licensee's volunteer services to demonstrate the services meet the requirements of this subsection.

(3) In accordance with Section 58-13-3, a health care professional licensee may fulfill up to 15% of the licensee's continuing education requirements by providing volunteer services at a qualified location, within the scope of the licensee's license, earning one hour of continuing education credit for [~~every~~] each four documented hour[s] accrual of volunteer services.

#### **R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.**

[~~1~~] A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

Under Subsection 58-1-308(2), if a dissolved entity's existence has been reinstated prior to the expiration date shown upon the entity's expired license, and the entity meets the qualifications for licensure:

(1) if the entity submits its application for reinstatement[~~;~~

(a) upon written application for reinstatement of licensure submitted] prior to the expiration date shown on the license, the license shall be retroactively reinstated to the date of expiration of licensure; and

(b) 2 if the entity submits its application for reinstatement[~~upon written application for reinstatement submitted~~] after the expiration date shown on the [~~current~~] license, the license shall be reinstated on the effective date of the approval of the application for reinstatement[~~, rather than relating back retroactively to the date of expiration of licensure~~].

**R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.**

(1) ~~When~~ If an initial, renewal, or reinstatement applicant under ~~S[ub]sections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b)~~ is selected for audit, ~~is~~ under investigation, or ~~is~~ pending inspection, the Division may conditionally issue ~~an~~ the initial license ~~to an applicant for initial licensure,~~ or conditionally renew or reinstate the license ~~of an applicant~~ pending the completion of the audit, investigation or inspection.

(2) The undetermined completion of a referenced audit, investigation or inspection, rather than the established expiration date, shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement ~~shall~~ is not ~~constitute~~ an adverse licensure action.

(4) Upon completion of the audit, investigation, or inspection, the Division shall notify the ~~initial license, renewal, or reinstatement~~ applicant ~~whether~~ if the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure ~~to an applicant the Division conditionally licensed, renewed, or reinstated~~ shall include ~~the following~~:

(a) ~~that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and~~ the basis for ~~such~~ action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) ~~notice that the action~~ denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to agency review, and ~~a description of~~ how and when the applicant may request agency review ~~such review may be requested~~.

**R156-1-308g. Reinstatement of Licensure ~~which~~ that was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.**

The following requirements shall apply to reinstatement of licensure ~~which~~ that was active and in good standing at the time of expiration of licensure:

(1) ~~In accordance with~~ Under Subsection 58-1-308(5), if the filing date of an application for reinstatement is ~~received by the Division~~ between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form ~~as~~ furnished by the Division demonstrating compliance with requirements and ~~for~~ conditions of license renewal; and

(b) pay the ~~established~~ license renewal fee and a late fee.

(2) ~~In accordance with~~ Under Subsection 58-1-308(5), if the filing date of an application for reinstatement is ~~received by the Division~~ between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form ~~as~~ furnished by the Division demonstrating compliance with requirements and ~~for~~ conditions of license renewal; and

(b) pay the ~~established~~ license renewal fee and reinstatement fee.

(3) ~~In accordance with~~ Under Subsection 58-1-308(6)(~~a~~), if the filing date of an application for reinstatement is ~~received by the Division~~ more than two years after the date the license expired; ~~and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the~~

~~(a) if the applicant has not been active in the licensed occupation or profession as described in Subsection 58-1-308(6)(b)308k, the applicant shall:~~

~~(a)i~~ submit an application for licensure complete with ~~all~~ supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets ~~all~~ current qualifications for licensure; and

~~(b)ii~~ ~~provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and~~

~~(c)~~ pay the ~~established~~ license fee for a new applicant for licensure ~~;~~ or

~~(b) if the~~

~~(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the~~ applicant has been active in the licensed occupation or profession as described in Subsection 58-1-308(6)(b), the applicant shall: ~~while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:~~

~~(a)i~~ provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

~~(b)ii~~ provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

~~(e)iii~~ provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

~~(d)iv~~ pay the ~~established~~ license renewal fee and the reinstatement fee.

**R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.**

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order ~~which~~ that imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) A petition ~~Petitions~~ for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

**R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.**

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with ~~[all]~~ supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets ~~[all]~~ current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the ~~[established]~~ license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession ~~[for which the applicant was suspended, restricted, or placed on probation]~~; and

(4) pay any fines or citations owed to the Division ~~[prior to the expiration of license]~~.

**R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.**

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with ~~[all]~~ supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets ~~[all]~~ current qualifications for licensure and compliance with requirements and ~~[or]~~ conditions of license reinstatement;

(2) pay the ~~[established]~~ license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession ~~[for which the applicant was revoked]~~.

**R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.**

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure ~~[listed]~~ in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with ~~[all]~~ supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and ~~[or]~~ conditions of license reinstatement;

(b) pay the ~~[established]~~ license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession ~~[for which the applicant was surrendered]~~; and

(d) pay any fines or citations owed to the Division ~~[prior to the surrender of license]~~.

**R156-1-310. Application for Division Determination Regarding Criminal Conviction.**

The application procedures for a Division determination pursuant to Section 58-1-310 are clarified and established as follows:

(1) An individual applying for a determination shall submit the Application for Criminal History Determination form made available on the Division's website, containing a signed attestation and release.

(2) An individual shall submit a separate application for criminal history determination with processing fee for each ~~[occupational or professional]~~ license that the individual is interested in seeking.

(3) Pursuant to Subsection 58-1-310(2), the individual's complete criminal conviction history shall include:

(a) criminal convictions, pleas of nolo contendere, and pleas of guilty or nolo contendere ~~[which]~~ that are held in abeyance pending the successful completion of probation; and

(b) current restrictions from possession, purchase, transfer, or ownership of a firearm or ammunition.

(4) Pursuant to Subsection 58-1-310(2)(e), the individual shall provide any additional documentation that may be required by the Division to verify or evaluate the individual's representations made in their application.

(5) A determination shall be based solely on the information contained in the individual's application and supporting documents.

~~(6) [An individual whose application has been denied as incomplete, or who has received an unfavorable determination that their criminal record would disqualify them from obtaining the license, may submit a request for agency review to the executive director within 30 days of the date of issuance of the denial or of the unfavorable determination.] Agency review is not available for a Division order or determination for an application filed under Section 58-1-310.~~

**~~[R156-1-404a. Diversion Advisory Committees Created.~~**

~~(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.~~

~~(2) Committee members are appointed by and serve at the pleasure of the director.~~

~~(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.~~

~~(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.~~

**~~R156-1-404b. Diversion Committees Duties.~~**

~~The duties of diversion committees shall include:~~

~~(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion; interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;~~

~~(2) recommending to the director terms and conditions to be included in diversion agreements;~~

- ~~\_\_\_\_\_ (3) supervising compliance with all terms and conditions of diversion agreements;~~
- ~~\_\_\_\_\_ (4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and~~
- ~~\_\_\_\_\_ (5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.~~

**R156-1-404c. Diversion - Eligible Offenses.**

~~\_\_\_\_\_ In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).~~

**R156-1-404d. Diversion - Procedures.**

- ~~\_\_\_\_\_ (1) No later than 60 days following the referral of a licensee to the diversion committee for possible diversion, diversion committees shall complete the duties described in Subsection R156-1-404b(1) and (2).~~
- ~~\_\_\_\_\_ (2) Following the completion of diversion committee duties, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the Division not to exceed 30 days from the service of the proposed diversion agreement, to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsection 58-1-404.~~
- ~~\_\_\_\_\_ (3) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, or if the director finds that the licensee does not meet the qualifications for diversion, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.~~
- ~~\_\_\_\_\_ (4) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement, and at any hearing before the director relating to a diversion program.~~

**R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.**

- ~~\_\_\_\_\_ (1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.~~
- ~~\_\_\_\_\_ (2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.~~
- ~~\_\_\_\_\_ (3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.~~
- ~~\_\_\_\_\_ (4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.~~

~~\_\_\_\_\_ (5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.]~~

**R156-1-501. Unprofessional Conduct.**

- "Unprofessional conduct" includes:
  - (1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress, or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;
  - (2) practicing a regulated occupation or profession in, through, or with a limited liability company [~~which~~that has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;
  - (3) practicing a regulated occupation or profession in, through, or with a limited partnership [~~which~~that has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;
  - (4) practicing a regulated occupation or profession in, through, or with a professional corporation [~~which~~that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;
  - (5) using a DBA (doing business as name) [~~which~~that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;
  - (6) failing, as a prescribing practitioner, to follow the [~~"Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference;~~
  - ~~\_\_\_\_\_ (7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013,]Guidelines for the Chronic Use of Opioid Analgesics", adopted as policy April 2017 by the Federation of State Medical Boards, which is incorporated by reference;~~
  - ([8]7) violating a[~~ny~~] term, condition, or requirement [~~contained~~]in a "diversion agreement"[~~;~~] as defined in Subsection [58-1-404(6)(a)]58-4a-102(1), or "program contract" as defined in Subsection 58-4a-102(4); or
  - ([9]8) failing, as a health care provider, to follow the health care claims practices of S[~~ubs~~]ection 31A-26-[~~301-5(4)~~]313, in violation of Subsection 58-1-508(2).

**R156-1-501.1. Cheating on Examinations.**

- (1) Policy.
  - The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is [~~considered to be~~]evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be

considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

- (a) communication between examinees inside of the examination room or facility during the course of the examination;
- (b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;
- (c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;
- (d) permitting anyone to copy answers to the examination;
- (e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;
- (f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination ~~[for the purpose of assisting]~~ to assist an examinee in the examination;
- (g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee. ~~[;]~~

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating. ~~[; or]~~

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant ~~[must]~~ shall meet to qualify for a license including the earliest date ~~[on which]~~ when the Division will again consider the applicant for licensure.

**R156-1-502. Administrative Penalties.**

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under

this Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Fine
58-1-501(1) (a)	\$ 500.00
58-1-501(1) (c)	\$ 800.00
58-1-501(1) (g)	\$ 500.00
58-1-501(2) (o)	\$ 0 - \$250.00
58-1-508(2)	\$ 250.00

SECOND OFFENSE

58-1-501(1) (a)	\$1,000.00
58-1-501(1) (c)	\$1,600.00
58-1-501(1) (g)	\$1,000.00
58-1-501(2) (o)	\$251.00 - \$500.00
58-1-508(2)	\$ 500.00

THIRD OFFENSE

Double the amount for a second offense, with a maximum amount not to exceed the maximum fine ~~[allowed]~~ under Subsection 58-1-502(2)(j)(iii).

~~[(2)]~~ Citations ~~[shall]~~ may not be issued for third offenses, except in extraordinary circumstances approved by the ~~[investigative]~~ investigation supervisor or chief investigator.

~~[(3)]~~ Multiple offenses may be cited on the same citation, if the citation clearly indicates each offense and the fine allocated to each offense. ~~[If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.]~~

~~[(4)]~~ An ~~[investigative]~~ investigation supervisor or chief investigator may authorize a deviation from the fine ~~[schedule]~~ in a citation based upon the aggravating or mitigating circumstances.

~~[(5)]~~ The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

**R156-1-503. Reporting Disciplinary Action.**

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or ~~[any]~~ other person who is entitled to such information under the Government Records Access and Management Act.

**R156-1-506. Supervision of Cosmetic Medical Procedures.**

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures ~~[is defined to]~~ includes the following:

- (1) the appropriate standards of care for performing nonablative cosmetic medical procedures;
- (2) physiology of the skin;
- (3) skin typing and analysis;
- (4) skin conditions, disorders, and diseases;
- (5) pre and post procedure care;
- (6) infection control;
- (7) laser and light physics training;
- (8) laser technologies and applications;
- (9) safety and maintenance of lasers;
- (10) cosmetic medical procedures an individual is permitted to perform under this title;

NOTICES OF PROPOSED RULES

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

- (a) American Heart Association;
- (b) American Red Cross or its affiliates; or
- (c) American Safety and Health Institute.

**R156-1-602. Telehealth - Definitions.**

In accordance with Section 26-60-103 and Subsection 26-60-104(1), in addition to the definitions in ~~[Title 58 and Rule R156, as used in this section]~~ Title 26, Chapter 60, Telehealth Act, as used in Title 58 or this Title R156 the following rule definitions supplement the statutory definitions:

~~(1) ["Asynchronous store and forward transfer" means the same as defined in Subsection 26-60-102(1).~~

~~(2) "Standards of Practice" means those standards of practice applicable in a traditional health care setting, as provided in Subsection 26-60-103(1)(a)(ii).~~

~~(3) "Distant site" means the same as defined in Subsection 26-60-102(2).~~

~~(4) "Originating site" means the same as defined in Subsection 26-60-102(3).~~

~~(5) "Patient" means the same as defined in Subsection 26-60-102(4).~~

~~(6) "Patient Encounter" means any encounter where medical treatment and evaluation and management services are provided. For purposes of this rule, the entire course of an inpatient stay in a healthcare facility or treatment in an emergency department is considered a single patient encounter.~~

~~(7) "Provider" means the same as defined in Subsection 26-60-102(5)(b), an individual licensed under Title 58 to provide health care services, and:~~

~~(a) shall include an individual exempt from licensure as defined in Section 58-1-307 who provides health care services within the individual's scope of practice under Title 58, Occupations and Professions; and~~

~~(b) [for purposes of this section, "provider" may include multiple providers obtaining informed consent and providing care as a team, consistent with the standards of practice applicable to a broader practice model found in traditional health care settings.]~~

~~(8) "Synchronous interaction" means the same as defined in Subsection 26-60-102(6).~~

~~(9) "Telehealth services" means the same as defined in Subsection 26-60-102(7).~~

~~(10) "Telemedicine services" means the same as defined in Subsection 26-60-102(8).~~

**R156-1-603. Telehealth - Scope of Telehealth Practice.**

~~(1)(a) [This rule is not intended to alter or amend the applicable standard of practice for any healthcare field or profession. The provider shall be held to the same standards of practice including maintaining patient confidentiality and recordkeeping that would apply to the provision of the same health care services in an in-person setting.~~

~~(2) [In accordance with [Section] Subsection 26-60-103(1) and Subsection 26-60-104(1)], a provider offering telehealth services shall, prior to each patient encounter:~~

- ~~(a) i) verify the patient's identity and originating site;~~

~~(ii) allow the patient an opportunity to select their provider rather than being assigned a provider at random, to the extent possible; and~~

~~(iii) ensure that the online site does not restrict the patient's choice to select a specific pharmacy for pharmacy services; and~~

~~(b) prior to each initial patient encounter, and at least annual intervals, obtain informed consent to the use of telehealth services by clear disclosure of:~~

~~(i) additional fees for telehealth services, if any, and how payment is to be made for those additional fees if they are charged separately [from any fees for face-to-face services provided to the patient in combination with the telehealth services];~~

~~(ii) to whom patient health information may be disclosed and for what purpose, including clear reference to any patient consent governing release of patient-identifiable information to a third-party;~~

~~(iii) the rights of the patient[s] with respect to patient health information;~~

~~(iv) appropriate uses and limitations of the site, including emergency health situations;~~

~~(v) information [:~~

~~(A) affirming that the telehealth services meet industry security and privacy standards, and comply with all laws referenced in Subsection 26-60-102(8)(b)(ii), and [;~~

~~(B) warning of potential risks to privacy regardless of [notwithstanding] the security measures;~~

~~(E) vi) a warning that information may be lost due to technical failures, and clearly referencing any patient consent to hold the provider harmless for such loss; and~~

~~(F) vii) information disclosing the website owner ['] operator, location, and contact information. [; and~~

~~(c) allow the patient an opportunity to select their provider rather than being assigned a provider at random, to the extent possible;~~

~~(d) ensure that the online site from which the provider offers telehealth services does not restrict a patient's choice to select a specific pharmacy for pharmacy services.~~

~~(3) In accordance with Subsection 26-60-103(1)(b), it is not an acceptable standard of care for a provider offering telehealth services to establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment based solely on an online questionnaire, except as specifically provided in Title 58, Chapter 83, the Online Prescribing, Dispensing and Facilitation Licensing Act.]~~

~~(4) [2] In accordance with Subsection 26-60-103(1)(e)d), a provider offering telehealth services shall be available to the patient for subsequent care related to the initial telemedicine services [by] as follows:~~

~~(a) providing the patient with a clear mechanism to:~~

- ~~(i) access, supplement, and amend patient-provided personal health information;~~

~~(ii) contact the provider for subsequent care;~~

~~(iii) obtain upon request an electronic or hard copy of the patient's medical record documenting the telemedicine services, including the informed consent provided; and~~

~~(iv) request a transfer to another provider of the patient's medical record documenting the telemedicine services; and~~

~~(b) if the provider recommends that the patient [needs to] be seen in person, such as [where] if diagnosis requires a physical examination, lab work, or imaging studies:~~

~~(i) arranging to see the patient in person, or directing the patient to the patient's regular provider, or if none, to an appropriate provider; and~~



(ii) documenting the recommendation in the patient's medical record; and

(c) upon patient request, electronically transferring to another provider the patient's medical record documenting the telemedicine services, within a reasonable time frame allowing for timely care of the patient by that provider.

~~(5) In accordance with Subsection 26-60-103(1)(d), a provider offering telehealth services shall be familiar with available medical resources, including emergency resources near the originating site.~~

~~(6) In settings and circumstances where an established provider-patient relationship is not present, a provider offering telehealth services shall establish a provider-patient relationship during the patient encounter, in a manner consistent with standards of practice including providing the provider's licensure and credentials.~~

([7]3) Nothing in this section shall prohibit electronic communications consistent with standards of practice applicable in traditional health care settings, including the following:

(a) between a provider and a patient with a preexisting provider-patient relationship;

(b) between a provider and another provider concerning a patient with whom the other provider has a provider-patient relationship;

(c) in on-call or cross coverage situations [in which]when the provider has access to patient records;

(d) in broader practice models [where]when multiple providers provide care as a team, including, for example:

(i) within an existing organization; or

(ii) within an emergency department; or

(e) in an emergency, which as used in this section means a situation [in which]when there is an occurrence posing an imminent threat of a life-threatening condition or severe bodily harm.

**KEY:** ~~[diversion programs,]~~licensing, supervision, evidentiary restrictions

**Date of Enactment or Last Substantive Amendment:** ~~January 9, 2020~~**2021**

**Notice of Continuation:** December 6, 2016

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-308; 58-1-501(2)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R156-46b	Filing No. 53288

**Agency Information**

<b>1. Department:</b>	Commerce
<b>Agency:</b>	Occupational and Professional Licensing
<b>Building:</b>	Heber 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

Contact person(s):		
Name:	Phone:	Email:
Deborah Blackburn	801-530-6060	deborahblackburn@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R156-46b. Division Utah Administrative Procedures Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
The Division of Occupational and Professional Licensing (Division) is filing these proposed amendments to update this rule in accordance with statutory changes made by H.B. 285 passed in the 2020 General Session.
<b>4. Summary of the new rule or change:</b>
The proposed amendments make the following changes:
1) update references to the Division's diversion program with references to the Division's new Utah Professionals Health Program (UPHP) enacted by H.B. 285 (2020);
2) clearly designate as formal a Division adjudicative proceeding regarding a board of appeal under Subsection 15A-1-207(3) (disputing the application and interpretation of a building code before the UBCC, after a city has been found to be negligent in its statutory responsibility to have an appeal process).
3) designate as informal adjudicative proceedings those initiated by a notice of agency action regarding a hunting guide or outfitter registered under Title 58, Chapter 79, Hunting Guides and Outfitters Registration Act, for unprofessional conduct under Subsections R156-79-502(12) (failing to comply with state or federal laws and rules regarding hunting guides and outfitters) or Subsection R156-79-502(14) (failing to adequately maintain general liability insurance as required by the US Forest Service or the Bureau of Land Management); and
4) make stylistic changes throughout consistent with the Rulewriting Manual for Utah.
Google Meets information for February 25, 2021 rule hearing before the Division. Join with Google Meet: <a href="https://meet.google.com/mms-abwd-mxu">meet.google.com/mms-abwd-mxu</a> Join by phone: (US) +1 657-529-2812 (PIN: 172567001).

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
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<p><b>A) State budget:</b></p> <p>The proposed amendments to Subsection R156-46b-202(2) are expected to result in a cost savings to the Division by simplifying the required adjudicative proceedings for the referenced unprofessional conduct. Based on two anticipated adjudicative proceedings per year that now may be conducted informally instead of formally under the Administrative Procedures Act, it is anticipated that the Division will save approximately \$2,300 annually ongoing based on reduced labor costs and mailing savings. The remaining proposed amendments are not expected to impact state government revenues or expenditures because they only update this rule to clarify Division procedures and to refer to the Division's new UPHP program enacted by H.B. 285 (2020).</p>
<p><b>B) Local governments:</b></p> <p>No impact is expected to local governments because these changes will not affect local government practices or procedures.</p>
<p><b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):</p> <p>None of these proposed amendments are expected to impact small businesses' revenues or expenditures because the changes merely update Division procedures and terminology and will not alter the price or quantity of any exchanges involving small businesses.</p>
<p><b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):</p> <p>None of these proposed amendments are expected to impact non-small businesses' revenues or expenditures because the changes merely update Division procedures and terminology and will not alter the price or quantity of any exchanges involving non-small businesses.</p>
<p><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>):</p> <p>The Division estimates that approximately two registrants per year will fail to comply with Subsections R156-79-502(12) or R156-79-502(14), but the typical registrant will not be impacted as it will not affect their actions in responding to the Division. The referenced unprofessional conduct provisions are based on a registrant's duty to comply with other state or federal requirements for hunting guides and outfitters, and registrants in these cases either promptly come into compliance upon receiving notice of the failure or have ceased to practice. The remaining proposed amendments are not expected to impact other persons because they only update this rule to refer to the new Utah Professionals Health Program (UPHP) in accordance with H.B. 285 (2020) and do not impose</p>

additional costs beyond what was anticipated during the legislative process.

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

As described above, none of the proposed amendments are expected to impose compliance costs 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.)

<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	\$2,300	\$2,300	\$2,300
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>\$2,300</b>	<b>\$2,300</b>	<b>\$2,300</b>
<b>Net Fiscal Benefits</b>	<b>\$2,300</b>	<b>\$2,300</b>	<b>\$2,300</b>

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

The Interim Executive Director of the Department of Commerce, Margaret W. Busse, 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 proposes amendments to the Division's Utah Administrative Procedures Act rule. The Division is filing

these proposed amendments to clarify and update this rule and to implement certain statutory changes made by H.B. 285 (2020). Further, the Division has made minor amendments to update references and clarify this rule.

**Small Businesses (less than 50 employees):**

The proposed amendments are not expected to impact small businesses' revenues or expenditures because the changes merely update the Division procedures and make formatting changes for clarity. Further, no fiscal impact is expected for small business over and above any fiscal impact described in the legislative fiscal notes for H.B. 285 (2020) Session as these costs are either inestimable or there is no fiscal impact.

**Regulatory Impact to Non-Small Businesses (50 or more employees):**

These amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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

Margaret W. Busse, Interim Executive Director

**Citation Information**

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

Subsection 63G-4-102(6)	Subsection 58-1-106(1)(a)	
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**Public Notice Information**

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

**A) Comments will be accepted until:** 03/17/2021

**B) A public hearing (optional) will be held:**

On:	At:	At:
02/25/2021	9:00 AM	Rule hearing will be held electronically before the Division. See Google Meets information in Box #4 above.

**10. This rule change MAY become effective on:** 03/24/2021

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>	Mark B. Steinagel, Director	<b>Date:</b>	01/21/2021
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**R156. Commerce, Occupational and Professional Licensing. R156-46b. Division Utah Administrative Procedures Act Rule. R156-46b-103. Authority - Purpose.**

(1) This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Administrative Procedures Act, and Subsections 58-1-106(1)(a) and 58-1-108(1)~~[, and Subsection 58-1-106(1)(a)].~~

(2) The purposes of this rule include:

(a) ~~[classifying]~~designating categories of Division adjudicative proceedings;

(b) ~~[clarifying the identity of]~~identifying presiding officers at Division adjudicative proceedings; and

(c) defining procedures for Division adjudicative proceedings ~~[which]that~~ are consistent with ~~[the requirements of]~~ Title[s] 58, Occupations and Professions, [and] Title 63G, General Government, and Rule R151-4, Department of Commerce Administrative Procedures Act Rule.

**R156-46b-201. Formal Adjudicative Proceedings.**

(1) The following adjudicative proceedings ~~[initiated]~~commenced by a request for agency action are ~~[classified]~~designated as formal adjudicative proceedings:

(a) special appeals board held in accordance with Section 58-1-402;

(b) declaratory order determining the applicability of statute, rule, or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(c) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings ~~[initiated]~~commenced by a ~~[Notice of Agency Action]~~notice of agency action are ~~[classified]~~designated as formal adjudicative proceedings:

(a) disciplinary proceedings, except those ~~[classified]~~designated as informal proceedings under Section R156-46b-202, ~~[that result in]~~for the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed through a citation;

(vi) administrative fine except when imposed through a citation; and

NOTICES OF PROPOSED RULES

- (vii) issuance of a public reprimand;
- (b) unilateral modification of a disciplinary order; and
- (c) termination of diversion agreement[s] or of a program contract under Section 58-4a-107.

**R156-46b-202. Informal Adjudicative Proceedings.**

(1) Pursuant to Section 63G4-202, the following adjudicative proceedings initiated/commenced by other than a notice of agency action are classified/designated as informal adjudicative proceedings:

- (a) approval or denial of an application for:
  - (i) initial licensure;
  - (ii) renewal or reinstatement of licensure;
  - (iii) relicensure;
  - (iv) inactive or emeritus licensure status;
  - (v) a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; or
  - (vi) criminal history determination;
- (b) favorable or unfavorable determination, based on an application for criminal history determination pursuant to under Section 58-1-310;
- (c) board of appeal under Subsection 15A-1-207(3);
- (d) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
- (e) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (f) under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
- (f) approval or denial of a request:
  - (i) to surrender licensure;
  - (ii) for entry into and participation in the Utah Professionals Health Program under Title 58, Chapter 4a, Utah Professionals Health Program/diversion program under Section 58-1-404;
  - (iii) for modification of a disciplinary order;
  - (iv) for correction of procedural or clerical mistakes; or
  - (v) for correction of other than procedural/procedural or clerical mistakes;
- (g) matters relating to diversion program/Title 58, Chapter 4a, Utah Professionals Health Program, including:
  - (i) approval or denial of a request for modification of a program contract or diversion agreement;
  - (ii) matters relating to a program contract or diversion agreement that do not involve termination under Section 58-4a-107; or
  - (iii) determination of a licensee's successful completion of the Utah Professionals Health Program;
- (h) citation hearings held in accordance with citation authority established under Title 58, Occupations and Professions;
- (i) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;
- (j) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and
- (k) other requests for agency action permitted by statute or rule governing the Division not specifically classified/designated as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) Pursuant to Section 63G-4-202, the following adjudicative proceedings initiated/commenced by a notice of agency

action are classified/designated as informal adjudicative proceedings:

- (a) nondisciplinary proceedings that result[s] in cancellation of licensure;
- (b) disciplinary proceedings against:
  - (i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
  - (ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and
  - (iii) a contract security company or armored car company licensed under Title 58, Chapter 63, Security Personnel Licensing Act, for failure to replace a qualifier as required under Section 58-63-306; or
  - (iv) a hunting guide or outfitter registered under Title 58, Chapter 79, Hunting Guides and Outfitters Registration Act, for unprofessional conduct under Subsections R156-79-502(12) or R156-79-502(14);
- (c) disciplinary proceedings initiated/commenced by a notice of agency action and order to show cause concerning violations of an order governing a license;
- (d) disciplinary proceedings initiated/commenced by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:
  - (i) Subsections 58-1-501(2)(c) or (d); or
  - (ii) Subsections R156-1-501(1) through (5); and
- (e) disciplinary proceedings initiated/commenced by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Subsection 58-1-308(4)(b).

**R156-46b-301. Designation.**

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Sections 58-1-109 and by Section R156-1-109.

**R156-46b-401. In General.**

- (1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4, Department of Commerce Administrative Rule, and this rule.
- (2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4, Department of Commerce Administrative Procedures Act Rule, and this rule.

**R156-46b-402. Response to Notice of Agency Action in an Informal Adjudicative Proceeding.**

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.

(1) In accordance with Sections 63G-4-202 and R156-4-205, a notice of agency action commencing an informal adjudicative proceeding may require a respondent to file a written response or answer.

(2) Unless a different date is specified in the notice of agency action, a respondent shall file a required written response or

answer within 30 days of the mailing date of the notice of agency action.

**R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.**

(1) In accordance with Section 63G-4-203, [E]videntiary hearings are not required for [informal] Division informal adjudicative proceedings unless:

- (a) required by statute or rule[;]; or
- (b) permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule [must]shall be submitted in writing:

- (a) [no later than]within 20 days [following]of the issuance of the notice of agency action if the proceeding was [initiated]commenced by the Division[;]; or
- (b) [together]with the request for agency action if the proceeding was not [initiated]commenced by the Division.

(3) An evidentiary hearing is required for [for the following informal proceedings:

- (a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and
- (b) [an informal adjudicative proceeding under R156-46b-202(1)(f)]g, citation hearings[held in accordance with Title 58].

(4) An evidentiary hearing is permitted for an informal adjudicative proceeding under Subsection R156-46b-202(1)(f), [pertaining to]matters relating to the Utah Professionals Health Program[a diversion program in accordance with R156-46b-202(1)(k)].

(5)(a) Unless otherwise agreed by the parties, [no]an evidentiary hearing [shall]may not be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d).

(b) Timely notice means service of a [Notice of Hearing]notice of hearing upon [all]the parties [not later than]at least ten days prior to [any]the scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

**R156-46b-404. Orders in Informal Adjudicative Proceedings.**

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy [the requirements of]Subsection 63G-4-203(1)(i).

(3)(a) Issuance of a letter denying a license or related requests is sufficient to satisfy [the requirements of]Subsection 63G-4-203(1)(i).

(b) The letter [must]shall explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

**R156-46b-405. Informal Agency Advice.**

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) [A notice shall appear in the]The informal guidance letter [notifying]shall notify the subject of the letter that:

- (a) the letter is only an informal guidance letter, [only]and is not [intended as]a formal declaratory order; and
- (b) [-The notice shall also]provide the citation [where the requirements which]that governs declaratory orders[are found].

**KEY: administrative procedures, government hearings, occupational licensing**

**Date of Enactment or Last Substantive Amendment: [December 23, 2019]2021**

**Notice of Continuation: November 19, 2020**

**Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R156-72	Filing No. 53287

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City, UT 84111	
<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>
R156-72. Acupuncture Licensing Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
This filing amends this rule to clarify the practice of acupuncture within the scope of the statutory changes made by S.B. 157, passed in the 2019 General Session, to define injection therapy, and to update licensure by endorsement procedures in accordance with H.B. 23, passed in the 2020 General Session. These amendments update references and clarify what constitutes informed consent for patients and what constitutes unprofessional

conduct for practicing herbal medicine beyond the scope of the licensee's education and training.

**4. Summary of the new rule or change:**

Section R156-72-102 is amended to update and clarify definitions and references in accordance with the statutory changes made by S.B. 157 (2019) and recommendations made by the Board. This includes defining the phrase "according to practitioner training" and the term "modern research" as used in Subsection 58-72-102(5)(b)(ii).

Section R156-72-302a is amended in its entirety to add new language clarifying the certification requirements of Subsection 58-72-302(3) and the examination requirements of Subsection 58-72-302(3), to allow an applicant to submit proof of current and active National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) certification, or licensure in good standing as an acupuncturist in any US state, district, or territory for at least one year immediately preceding the application.

Section R156-72-302b is amended to clarify that the 50 hours of on the job training to engage in animal acupuncture may be under the "indirect" supervision of a licensed veterinarian.

Section R156-72-302c regarding informed consent is amended to add that if a patient will be receiving an adjunctive therapy the acupuncturist shall provide a written disclosure regarding the acupuncturist's education and training to perform that therapy, and amended to clarify that records shall be maintained for seven years.

Section R156-72-302d regarding unprofessional conduct is renumbered to Section R156-72-503 to conform to the practice act, and is amended to: 1) clarify what constitutes violating renewal qualifications, 2) change the reference to the medical records retention requirement from ten to seven years, and 3) define as unprofessional conduct failing to maintain current and active NCCAOM certification, failing to maintain current cardiopulmonary resuscitation/basic life support (CPR/BLS) certification, or recommending, administering, or providing dietary guidelines, herbs, supplements, homeopathics, or therapeutic exercise without having completed the required "practitioner training" as defined in new Subsection R156-72-102(2).

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The Division of Occupational and Professional Licensing (Division) estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures as they merely clarify and define terms and update references in accordance with statutory changes. The amendment and restatement of Section R156-72-302a is expected to have no impact on the

Division or other state agencies as it only provides additional exam options for licensees and greater license portability. The amendments to newly renumbered Section R156-72-503 are not expected to impact the Division as they only more precisely define what constitutes unprofessional conduct. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any state governments that may be acting as employers of licensed individuals engaging in the practice of acupuncture to experience any measurable fiscal impact.

**B) Local governments:**

The Division estimates that these proposed amendments will have no measurable impact on local governments' revenues or expenditures as they will not impact local government practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any local governments that may be acting as employers of licensed individuals engaging in the practice of acupuncture to experience any measurable fiscal impact.

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

These proposed amendments will regulate individuals licensed under Title 58, Chapter 72, who are practicing or apply for licensure as an acupuncturist and may therefore, indirectly affect the estimated 300 small businesses in Utah comprising establishments of licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices (North American Industry Classification System (NAICS) 621399). However, as described below for other persons, these proposed amendments are not expected to have a measurable impact on individual small business owners or employees and therefore, will not indirectly impact small businesses' revenue or expenditures.

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

These proposed amendments will regulate individuals licensed under Title 58, Chapter 72, who are practicing or apply for licensure as an acupuncturist and may therefore, indirectly affect the estimated 25 non-small businesses in Utah comprising establishments of licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices, hospitals, or medical centers (NAICS 621111). However, as described below for other persons, these proposed amendments are not expected to have a measurable impact on individual non-small business owners or employees and therefore, will not indirectly impact non-small businesses' revenue or expenditures.

**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 172 licensed acupuncturists and approximately seven potential applicants for licensure each year who will be subject to these amendments. However, no measurable fiscal impact to these persons is expected. The amendments to newly renumbered Section R156-72-503 are not expected to result in a measurable impact on licensees as they only more precisely define what constitutes unprofessional conduct, and the practices of most licensees are or should be already consistent with these professional practice standards.

Additionally, these amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and it is impossible to estimate what these potential indirect costs might be with any accuracy because they will vary widely depending on the individual characteristics and actions of each licensee, and this relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

The remaining amendments are not expected to have any measurable impact on these persons as the amendments are made in accordance with statutory changes to clarify the services within the acupuncturist scope of practice and informed consent requirements for an acupuncturist, and to clarify the pathway to Utah licensure for a person who may wish to apply by endorsement.

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

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

**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 Executive Director of the Department of Commerce, Margaret W. Busse, 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 proposes amendments to the Acupuncture Licensing Act Rule. This filing harmonizes the statutory changes with this corresponding rule. Modifications to the statute for the practice of acupuncture were made in the S.B. 157 (2019), to define injection therapy, and to update licensure by endorsement in accordance with the H.B. 23 (2020). Further, these amendments update references, clarify informed consent and unprofessional conduct, and determine the scope of the licensee's education and training.

**Small Businesses (less than 50 employees):**

In Utah, there may be approximately 300 small business establishments that are affiliated with licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices (NAICS 621399). However, no fiscal impact is expected for small business over and above any fiscal impact described in the legislative fiscal notes in S.B. 157 (2019) and for H.B. 23 (2020) as these costs are either inestimable or there is no fiscal impact.

**Regulatory Impact to Non-Small Businesses (50 or more employees)**

There are 25 non-small businesses that associate with licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices, hospitals, or medical centers in Utah (NAICS 621111). However, this amendment is conforming the rule to the statutory changes made by S.B. 157 (2019) and H.B. 23 (2020). It is not expected to impact these non-small businesses beyond expectations in the legislative fiscal notes. Similar to the above mentioned costs in small businesses, further costs are either inestimable, for the reasons stated, or there is no fiscal impact.

<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Margaret W. Busse, 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 58-72-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)

**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>	NCCAOM Code of Ethics (Updates)
<b>Publisher</b>	National Commission for the Certification of Acupuncture and Oriental Medicine (NCCAOM)
<b>Issue, or version</b>	January 1, 2016

**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>	03/17/2021	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
02/16/2021	9:00 AM	For electronic Google Meets information for this rule hearing, see the Acupuncture Licensing Board February 16, 2021, agenda for this meeting date on the Public Meeting Notice website.

<b>10. This rule change MAY become effective on:</b>	03/24/2021
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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>	Mark B. Steinagel, Director	<b>Date:</b>	01/19/2021
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**R156. Commerce, Occupational and Professional Licensing. R156-72. Acupuncture Licensing Act Rule.**

**R156-72-102. Definitions.**

In addition to the definitions in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter 72, Acupuncture Licensing Act, the following rule definitions supplement the statutory definitions[as used in this rule]:

(1) "ACAOM" means the Accreditation Commission for Acupuncture and Oriental Medicine.

(2) "According to practitioner training" in Subsection 58-72-102(5)(b)(ii) means that the licensee has completed education and training from an educational program accredited or recognized by ACAOM regarding the recommendation, administration, or provision of dietary guidelines, herbs, supplements, homeopathics, and therapeutic exercise.

([+3])(+) "Administration"[~~as used~~] in Subsection 58-72-102([4]5)(b)(ii)[~~]~~ means the direct application of an herb, homeopathic, or supplement to the body of a patient by:

- ([+1]a) ingestion;
- ([+1]b) topical application;
- ([+1]c) inhalation; or
- ([+1]d) [acup]point injection therapy ([A]PIT).[

(b) Administration does not include:

- (i) venous injections;
- (ii) immunizations;
- (iii) legend drugs; or
- (iv) controlled substances.

(2) "Controlled substance" means a drug or substance defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(32) and (64).]

(4) "Herbs" and "homeopathics"[~~as used~~] in Subsection 58-72-102([4]5)(b)(ii)[~~]~~ may include:

- (a) vitamins;
- (b) minerals;
- (c) amino acids;
- (d) proteins; and
- (e) enzymes.

(5) "Insertion of acupuncture needles" in Subsection 58-72-102(5)(a) means a procedure of acupuncture and oriental medicine [which includes]including myofascial trigger point therapy, intramuscular therapy, perineural injection therapy (PIT), prolotherapy, proprioceptive stimulation, [Ashi]Ashi points, [and]or dry needling techniques.

(6) "Modern research" in Subsection 58-72-102(5)(b)(ii) means practicing according to acupuncture and oriental medicine education and training as recognized through NCCAOM.



~~[(6)]7~~ "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine, ~~[(f)]~~formerly known as the National Commission for the Certification of Acupuncturists (NCCA).~~]~~

~~(7) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.~~

~~(8) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).~~

**R156-72-302a. Qualifications for Licensure - ~~[Examination]~~Certification and Exam Requirements.**

~~[In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM in acupuncture or oriental medicine.]~~

In accordance with Subsections 58-72-302(3) and (4), to meet the requirements for current active certification in acupuncture under guidelines established by NCCAOM, and the requirements for passing the examination required by the Division, an applicant for licensure as a licensed acupuncturist shall submit documentation of:

- (1) current and active NCCAOM certification; or
- (2) pursuant to Subsection 58-1-302(1), licensure in good standing as an acupuncturist in any state, district, or territory of the United States, for at least one year immediately preceding the application.

**R156-72-302b. Qualifications for Licensure - Animal Acupuncture.**

In accordance with Subsections 58-28-307(12)(d) and 58-72-102(~~[(4)]5~~)(~~[(a)]b~~)(iii), to engage in the practice of animal acupuncture, a licensed acupuncturist ~~[practicing animal acupuncture must]~~shall complete 100 hours of animal acupuncture training and education ~~that includes: [- The training and education shall include:]~~

- (1) ~~[completing 50]~~ fifty hours of on the job training under the indirect supervision of a licensed veterinarian;
- (2) ~~[completing]~~ animal anatomy training; and
- (3) ~~[completing]~~ the remaining hours in animal specific continuing education.

**R156-72-302c. Informed Consent.**

(1) In accordance with Subsection 58-72-302(~~[(6)]5~~), ~~in order for~~ to enable patients to give informed consent to treatment, a licensed acupuncturist shall have a patient chart for each patient ~~[which shall include]~~that includes:

- (~~[(1)]a~~) a written review of symptoms;~~[-and]~~
- (~~[(2)]b~~) a statement~~[-]~~ signed by ~~[that]~~the patient~~[-, that consent is given to provide]~~ consenting to acupuncture treatment; ~~and[-]~~

(c) if the patient is receiving an adjunctive therapy as defined in Subsection 58-72-102(5), a written disclosure signed by the patient regarding the licensed acupuncturist's education and training to perform that therapy.

(2) In accordance with Section 58-72-503, patient records, including records documenting informed consent, shall be maintained for seven years.

**R156-72-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees

under Title 58, Chapter 72, Acupuncture Licensing Act, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308~~[e]~~b through R156-1-308l.

(3) In accordance with ~~[Section]~~Subsections 58-1-308(3)(b) and 58-72-303(3), a licensee ~~[must]~~who does not maintain current and active NCCAOM certification shall:

- (a) complete at least 30 continuing education units (CEU) or 30 professional didactic activity (PDA) points within the two-year renewal period; and
- (b) maintain current BLS-CPR certification.

**R156-72-~~302d~~503. Unprofessional Conduct.**

In accordance with Subsection 58-72-102(6), "unprofessional"~~[Unprofessional]~~ conduct" includes:

- (1) failing to maintain office, instruments, equipment, appliances, ~~[and]~~or supplies in a safe and sanitary condition;
- (2) ~~[failing as a licensee to]~~violating Subsection 58-72-303(3) regarding renewal qualifications by:~~[- maintain the professional development activity requirements, as required by the NCCAOM;]~~
  - (a) failing to maintain current and active NCCAOM certification;
  - (b) failing to complete all CEUs required under Subsection R156-72-303(3); or
  - (c) failing to maintain current BLS-CPR certification;

(3) failing to abide by ~~[and meet standards of -]~~the ~~["NCCAOM Code of Ethics"~~set by NCCAOM, adopted on October 14, 2008] revised January 1, 2016, that is ~~[which are]~~hereby incorporated by reference;

(4) failing to maintain ~~[medical]~~patient records for a ~~[ten]~~seven-year period;

(5) ~~[failing to obtain education and training recognized by NCCAOM if performing acupoint therapy injections; and]~~recommending, administering, or providing dietary guidelines, herbs, supplements, homeopathics, or therapeutic exercise without having completed the required practitioner training pursuant to Subsection 58-72-102(5)(b)(ii) and Subsection R156-72-102(2); or

(6) administering venous injections, immunizations, ~~[legend drugs and]~~or controlled substances.

**KEY: acupuncture, licensing**

**Date of Enactment or Last Substantive Amendment: ~~[January 23, 2018]~~2021**

**Notice of Continuation: September 8, 2016**

**Authorizing, and Implemented or Interpreted Law: 58-72-101; 58-1-106(1)(a); 58-1-202(1)(a)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R380-412	Filing No. 53290

**Agency Information**

1. Department:	Health
Agency:	Administration
Building:	Martha Hughes Cannon Building
Street address:	288 N 1460 W

NOTICES OF PROPOSED RULES

<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 14100	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1000	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Richard Oborn	385-232-4259	roborn@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R380-412. Compassionate Use Board
<b>3. Purpose of the new rule or reason for the change:</b>
Subsection 26-61a-105(6) of the Utah Medical Cannabis Act requires the Utah Department of Health (Department) to establish rules related to the Compassionate Use Board.
<b>4. Summary of the new rule or change:</b>
This proposed rule establishes a process and criteria for a petition to the Compassionate Use Board to automatically qualify for expedited final review and approval or denial by the Department.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed rule will not result in a fiscal impact to the state budget because it does not require any additional resources from the Department.
<b>B) Local governments:</b>
This proposed rule will not result in a fiscal impact to local governments because this rule does not establish requirements for enforcement by local agencies.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed rule will not result in a fiscal impact to small businesses because this rule does not establish new requirements for small businesses.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This proposed rule will not result in a fiscal impact to non-small businesses because this rule does not establish new requirements for non-small businesses.

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

This proposed rule will not result in a fiscal impact to other persons because this rule does not establish new requirements for other persons.

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

This proposed rule will not result in a fiscal impact to affected persons because it does not establish requirements for these 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**

<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 Executive Director of the Utah Department of Health, Richard Saunders, 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 will not have cost impact on businesses.

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

Richard Saunders, 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 26-61a-105(6)	Subsection 26-1-5(1)	
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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:** 03/17/2021

**B) A public hearing (optional) will be held:**

<b>On:</b>	<b>At:</b>	<b>At:</b>
02/22/2021	02:00 PM	Google Meet Link: meet.google.com/xq r-suba-jvz Phone: (US)+1  406-848-4597 PIN: 549 352 702#

**10. This rule change MAY become effective on:** 03/24/2021

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 Saunders, Executive Director	<b>Date:</b>	12/23/2020
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**R380. Health, Administration.**

**R380-412. Compassionate Use Board.**

**R380-412-1. Authority and Purpose.**

Pursuant to Subsections 26-1-5(1) and 26-61a-105(6), this rule establishes a process and criteria for a petition to the Board to qualify for expedited final review and approval or denial by the Department.

**R380-412-2. Compassionate Use Board Expedited Review Criteria.**

To qualify for expedited review by the Department, an individual submitting the petition shall meet the following criteria:

(1) diagnosis with a terminal illness and a life expectancy of six months or less;

(2) present symptoms not adequately managed with standard therapies that may reasonably be expected to be alleviated by medical cannabis; and

(3) have a OMP recommending medical cannabis who is directly and regularly involved in the individual's medical care.

**R380-412-3. Compassionate Use Board Expedited Review Process.**

(1) Each individual submitting a petition for expedited review by the Department shall complete a form available from the Department.

(2) Within five business days of receiving a complete petition for expedited review, the Department shall review the petition and either approve the petition and issue a medical cannabis card to the applicant or prepare the petition for Board review.

**KEY: medical cannabis, compassionate use board, medical marijuana**

**Date of Enactment or Last Substantive Amendment: 2021**

**Authorizing, and Implemented or Interpreted Law: 63G-3; 26-61a; 26-1-5(1); 26-61a-105(6)**

**NOTICE OF PROPOSED RULE**

<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-60-5</b>	<b>Filing No. 53296</b>

**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

Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-60-5. Limitations
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify provisions in this rule to be consistent with current Medicaid policy.
<b>4. Summary of the new rule or change:</b>
This amendment limits the further use of opioids for Medicaid members who already receive medication-assisted treatment (MAT) for opioid use disorder.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department of Health expects only de minimis impact to the state budget as this amendment simply updates and clarifies current policy for the Pharmacy Program.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund nor provide services under the Pharmacy Program.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The Department expects only de minimis impact on small businesses as this amendment simply updates and clarifies current policy for the Pharmacy Program.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The Department expects only de minimis impact on non-small businesses as this amendment simply updates and clarifies current policy for the Pharmacy Program.
<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 <i>agency</i> ):
The Department expects only de minimis impact on Medicaid providers and Medicaid members as this

amendment simply updates and clarifies current policy for the Pharmacy Program.

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

The Department expects only de minimis compliance costs to a single Medicaid provider or Medicaid member as this amendment simply updates and clarifies current policy for the Pharmacy Program.

**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 Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

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

Businesses should see neither revenue nor costs as this amendment simply updates current Medicaid policy.

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

Richard G. Saunders, 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 26-1-5	Section 26-18-3
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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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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 G. Saunders, Executive Director	<b>Date:</b>	01/26/2021
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-60. Medicaid Policy for Pharmacy Program.**

**R414-60-5. Limitations.**

(1) Medicaid may place limitations on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Medicaid includes these limitations in the Pharmacy Services Provider Manual and its attachments. These limitations are incorporated by reference in Section R414-1-5 and may include the following:

(a) quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) prior authorization.

(2) A pharmacy may dispense a covered outpatient drug that requires prior authorization for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List (PDL) may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Medicaid does not cover drugs provided to a member during an inpatient hospital stay, neither as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers prescription cough and cold preparations meeting the definition of a covered outpatient drug.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medicaid may cover medications on the Utah Medicaid Three-Month Supply Medication List, attachment to the Pharmacy Services Provider Manual, for up to a three-month supply per dispensing;

(b) Medicaid may cover prenatal vitamins for a pregnant woman, multiple vitamins with or without fluoride for a child who is zero through five years of age, and fluoride supplements for up to a three-month supply per dispensing;

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing; and

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of controlled substances. Medicaid will pay for a prescription refill for controlled substances after 85% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) drugs for weight loss;

(b) drugs to promote fertility;

(c) drugs for the treatment of sexual dysfunction;

(d) drugs for cosmetic purposes;

(e) vitamins; except for prenatal vitamins for a pregnant woman, vitamin drops for a child who is zero through five years of age, and fluoride supplements;

(f) over-the-counter drugs (OTC) not included on the Utah Medicaid PDL and Resources attachment to the Pharmacy Services Provider Manual;

(g) drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(h) drugs given by a hospital to a patient at discharge;

(i) breast milk, breast milk substitutes, baby food, or medical foods. Prescription metabolic products for congenital errors of

NOTICES OF PROPOSED RULES

metabolism are covered through the Durable Medical Equipment benefit; and

(j) drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Opioid claims used for the treatment of non-cancer pain are subject to the following limitations or restrictions set forth by the Division of Medicaid and Health Financing (DMHF):

- (a) initial fill limits;
- (b) monthly limits;
- (c) quantity limits;
- (d) additional limits for a child or pregnant woman;
- (e) morphine milligram equivalents (MME) and cumulative morphine equivalents daily (MED) limits;[-or]

(f) concurrent use of opioids with high-risk drugs as defined by DMHF[-];or

(g) concurrent use of opioid medications in members who also receive medication-assisted treatment (MAT) for opioid use disorder.

(13) Antipsychotic medications prescribed to a Medicaid member who is 19 years of age or younger are limited as follows:

- (a) no use of multiple antipsychotic drugs;
- (b) no off-label use;
- (c) no use outside established age guidelines; and
- (d) no doses higher than FDA recommendations.

(14) Exceptions may be granted as appropriate through the prior authorization process.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** [~~January 12,~~ 2021

**Notice of Continuation:** April 28, 2017

**Authorizing, and Implemented or Interpreted Law:** 26-18-3; 26-1-5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R414-303-11	Filing No. 53307

**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>
R414-303-11. Presumptive Eligibility for Medicaid
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to implement a provision for presumptive eligibility determinations through the electronic eligibility portal.
<b>4. Summary of the new rule or change:</b>
This amendment requires covered providers to make presumptive eligibility determinations through the electronic eligibility portal. It also makes other technical changes.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department of Health (Department) does not anticipate an impact to the state budget as this change only specifies presumptive eligibility procedures for Medicaid providers. Though the possibility of individuals not becoming presumptively eligible due to procedural errors exists, there is no method to calculate how often these errors might occur or how many individuals they might affect.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons)
The Department does not anticipate an impact on small businesses as this change only specifies presumptive eligibility procedures for Medicaid providers. Though the possibility of individuals not becoming presumptively eligible due to procedural errors exists, there is no method to calculate how often these errors might occur or how many individuals they might affect.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The Department does not anticipate an impact on non-small businesses as this change only specifies presumptive eligibility procedures for Medicaid providers. Though the possibility of individuals not becoming presumptively eligible due to procedural errors exists, there is no method to calculate how often these errors might occur or how many individuals they might affect.

**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 an impact on Medicaid providers as this change only specifies presumptive eligibility procedures. Though the possibility of individuals not becoming presumptively eligible due to procedural errors exists, there is no method to calculate how often these errors might occur or how many individuals they might affect.

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

The Department does not anticipate compliance costs to a single Medicaid provider or individual as this change only specifies presumptive eligibility procedures. Though the possibility of a prospective member not becoming presumptively eligible due to a procedural error exists, there is no method to calculate how often these errors might occur.

**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>	<b>\$0</b>	<b>\$0</b>	<b>\$0</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 Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

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

Businesses should see neither revenue nor costs as this change only specifies presumptive eligibility procedures for Medicaid providers.

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

Richard G. Saunders, 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 26-1-5	Section 26-18-3	
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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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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 G. Saunders, Executive Director	<b>Date:</b>	02/01/2021
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-303. Coverage Groups.**

**R414-303-11. Presumptive Eligibility for Medicaid.**

(1) The definitions found in 42 CFR 435.1101, and the provisions for presumptive eligibility found in 42 CFR 435.1103 and 42 CFR 435.1110, apply to ~~[Section R414-303-11]~~ this section.

(2) The following definitions also apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to ~~[make a determination of]~~ determine presumptive eligibility for a pregnant woman, and who meets the criteria defined in Subsection 1920(b)(2) of the Social Security Act. Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services, based on an individual's self-declaration ~~[that the individual meets the]~~ of meeting eligibility criteria.

(3) The Department shall provide[s] coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman ~~[states she]~~:

- (a) is pregnant;
- (b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or the Children's Health Insurance Program (CHIP).

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Subsection 1902(e)(4) of the Social Security Act. If the mother applies for ~~[Utah]~~ Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Subsection 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date, or until the end of the month in which the child turns 19 years of age, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive eligibility only through the end of the month after the presumptive determination date, or until the end of the month in which the individual turns 26 years ~~[old]~~ of age, whichever occurs first.

(8) An individual determined presumptively eligible for adult coverage may receive presumptive eligibility through whichever of the following occurs first:

- (a) ~~[F]~~ through the end of the month following the month of the presumptive determination;

(b) ~~[F]~~ through the end of the month in which the individual turns 65 years ~~[old]~~ of age; or

(c) ~~[U]~~ until the eligibility agency makes a determination for ongoing medical assistance.

(9) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups described in 42 CFR 435.110, 435.116, 435.118, 435.150, and Rule R414-312.

(10) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(11) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(12) ~~[The]~~ A covered provider may not count the following as income ~~[the following]~~:

- (a) ~~[V]~~ veteran's ~~[A]~~ administration ~~[(VA)]~~ payments;
- (b) ~~[C]~~ child support payments; or
- (c) ~~[E]~~ educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(13) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

- (a) ~~[P]~~ parents or caretaker relatives;
- (b) ~~[C]~~ children under 19 years of age;
- (c) ~~[F]~~ former foster care children;
- (d) ~~[I]~~ individuals with breast or cervical cancer; and
- (e) ~~[A]~~ adult expansion.

(14) A covered provider shall utilize the Department's electronic portal to make presumptive eligibility determinations. The eligibility agency may only determine regular medical assistance if the provider submits a paper application.

**KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility**

**Date of Enactment or Last Substantive Amendment: ~~2021~~ September 16, 2020**

**Notice of Continuation: January 8, 2018**

**Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R428-1	Filing No. 53300

**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Center for Health Data, Health Care Statistics
<b>Room no.:</b>	106
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state:</b>	Salt Lake City, UT
<b>Mailing address:</b>	PO Box 144004



<b>City, state, zip:</b>	Salt Lake City, UT 84114-4004	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carl Letamendi	801-538-7052	cletamendi@utah.gov
Mike Martin	801-538-9205	mikemartin@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R428-1. Health Data Plan and Incorporated Documents
<b>3. Purpose of the new rule or reason for the change:</b>
This filing updates material incorporated by reference to reflect technical requirements expected for compliance by the Utah Health Data Authority Act, Title 26, Chapter 33a.
<b>4. Summary of the new rule or change:</b>
The changes update data submittal guide (DSG) for: Healthcare Facilities Database (HFD) from Version 2.1 to Version 2.1.1; Consumer Assessment of Health Plans (CAHPS), Specifications for Survey Measures, to current measurement year 2020; Health Employer Data and Information Set (HEDIS), Compliance Audit, to current measurement year 2020; and remove reference to outdated documents incorporated by reference.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule iterates forward to the current versions of documents. The Utah Department of Health (Department) determines enactment of the amended versions will not create any cost or savings impact to the state budget or the Department's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
This filing does not create any direct cost or savings impact to local governments since they are not directly affected by this rule; 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):
None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50

or more employees. As a result, this rule will have no effect on small businesses for costs or savings.

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

Some data suppliers will need to program changes to their system in order to be consistent with the updated guidelines. According to our research of carriers impacted by the HFD changes, namely those representing facilities with standalone emergency departments, the compliance costs will be \$0 per facility to comply with proposed HFD DSG 2.1.1--in large part to changes being absorbed by existing maintenance contracts between the respective facility and its vendor. There are \$0 costs anticipated for CAHPS and HEDIS suppliers since the changes are reflective of normal business processes in preparation for the next reporting 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**):

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes are primarily technical and clarifying in nature.

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

Based on figures reported in Box 5D above, the Department estimates an industry cost of \$0 to data suppliers expected to comply with updated DSGs for the HFD, including those for the CAHPS and HEDIS programs.

**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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<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 Executive Director of the Department of Health, Richard G. Saunders, 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 will have no fiscal impact on business because the changes are technical and are consistent with business practices.

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

Richard G. Saunders, Interim 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 26-33a-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:**

First Incorporation	
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Healthcare Facility Data Submission Guide, Version 2.1.1
<b>Publisher</b>	Utah Department of Health
<b>Date Issued</b>	03/01/2021
<b>Issue, or version</b>	2.1.1

Second Incorporation	
<b>Official Title of Materials Incorporated (from title page)</b>	HEDIS Measurement Year 2020: Vol. 3: Specifications for Survey Measures
<b>Publisher</b>	National Committee for Quality Assurance
<b>Date Issued</b>	2020
<b>Issue, or version</b>	Vol. 3

Third Incorporation	
<b>Official Title of Materials Incorporated (from title page)</b>	HEDIS Measurement Year 2020: Vol. 5: HEDIS Compliance Audit: Standards, Policies and Procedures
<b>Publisher</b>	National Committee for Quality Assurance
<b>Date Issued</b>	2020
<b>Issue, or version</b>	Vol. 5

**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>	03/17/2021
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<b>10. This rule change MAY become effective on:</b>	03/24/2021
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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>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	01/15/2021
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**R428. Health, Center for Health Data, Health Care Statistics.**

**R428-1. Health Data Plan and Incorporated Documents.**

**R428-1-1. Legal Authority.**

This rule is promulgated in accordance with Title 26, Chapter 33a.

**R428-1-2. Purpose.**

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

**R428-1-3. Health Data Plan Adoption.**

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

**R428-1-4. Incorporation by Reference.**

The following documents are adopted and incorporated by reference:

(1) "Utah Healthcare Facility Data Submission Guide" means[=

~~\_\_\_\_\_ (a) ] Utah Healthcare Facility Data Submission Guide, Version 2.1.1 for data submissions required on or after [February]March 1[6], 20[48]21;~~

~~\_\_\_\_\_ (b) ] Utah Healthcare Facility Data Submission Guide, Version 2.1 for data submissions required on or after May 16, 2019;~~

(2) "NCQA Survey Specifications" means[=

~~\_\_\_\_\_ (a) ] HEDIS Measurement Year 2020[47], Vol.[ume] 3: Specifications for Survey Measures, published by NCQA[ for data submissions required before January 1, 2018, and~~

~~\_\_\_\_\_ (b) ] HEDIS 2018, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required on or after January 1, 2018;~~

(3) "NCQA HEDIS Specifications" means[=

~~\_\_\_\_\_ (a) ] HEDIS Measurement Year 2020[47], Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA[ for data submissions required before January 1, 2018, and~~

~~\_\_\_\_\_ (b) ] HEDIS 2018, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required on or after January 1, 2018;~~

(4) "Data Submission Guide for Claims Data" means[=

~~\_\_\_\_\_ (a) ] Utah All Payer Claims Database Data Submission Guide Version 3.1 (as corrected on March 15, 2018) for data submissions required before March 1, 2020, and~~

~~\_\_\_\_\_ (b) ] Utah All-Payer Claims Database Data Submission Guide Version 4.0 for data submissions required on or after March 1, 2020.~~

**KEY:** APCD, health, health policy, health planning

**Date of Enactment or Last Substantive Amendment:** 2021~~[January 28, 2020]~~

**Notice of Continuation:** November 10, 2016

**Authorizing, and Implemented or Interpreted Law:** 26-33a-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R455-16	Filing No. 53291

**Agency Information**

<b>1. Department:</b>	Heritage and Arts
<b>Agency:</b>	History

<b>Room no.:</b>	218	
<b>Building:</b>	Rio Grande Depot	
<b>Street address:</b>	300 S.Rio Grande St	
<b>City, state:</b>	Salt Lake City, UT	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Christopher W. Merritt	801-245-7263	cmerritt@utah.gov
Alycia Rowley	801-245-7263	aaldrich@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R455-16. Cultural Site Stewardship Program Vandalism Volunteer Selection, Training, and Certification Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
Section 9-8-208 instructs the Utah Division of State History (Division) to create and maintain a Cultural Site Stewardship Program. This rule provides procedures on how the Division will select, train, and certify volunteers to participate in the Stewardship Program.
<b>4. Summary of the new rule or change:</b>
This rule outlines procedures that State History will employ for the selection, training, and certification of volunteers who are participating in the Utah Cultural Site Stewardship Program in cooperation and coordination with other state and federal agency partners.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
None--The Division will coordinate responsibilities of volunteers through this rule. It does not require any expenditures.
<b>B) Local governments:</b>
None--This rule does not apply to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
None--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):
None--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**):

None--Anybody who volunteers for the cultural stewardship program through this rule will not be financially impacted.

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

None--Compliance with this rule will not require any expenditures by volunteers.

**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 Heritage and Arts, Jill Love, 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 impact on businesses.

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

Jill Love, 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  
9-8-208(5)

**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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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>	Josh Loftin, Communications Director	<b>Date:</b>	01/25/2021
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**R455. Utah Division of State History.**

**R455-16. Cultural Site Stewardship Program Volunteer Selection, Training, and Certification Procedures.**

**R455-16-1. Purpose and Authority.**

Under the Authority of Section 9-8-208, the Utah Division of State History shall create and maintain a Cultural Site Stewardship Program. This rule provides procedures on how the Division will select, train and certify volunteers to participate in the Stewardship Program.

**R455-16-2. Selection of Volunteers.**

A. The Division shall engage in public outreach activities to announce stewardship opportunities for potential volunteers.

B. Volunteers will self-select interest in the program and will fill out a volunteer application created by the Division and submit to the Stewardship Coordinator.

C. The Utah Cultural Site Stewardship Coordinator or designee will review each volunteer's application and supporting materials and contact the volunteer to move forward on their involvement in the program.

**R455-16-3. Training of Volunteers.**

A. After acceptance as a potential Cultural Site Stewardship volunteer, but before that volunteer service begins, the volunteer will participate in a training session held by the Division and agency partners.

B. Training includes the following components:

a. review of Volunteer Services Agreement, Code of Ethics, Photographic Release, and other required forms;

b. orientation to the conditions of volunteer service and the volunteer's specific assignment;

c. archaeological and cultural ethics and law;

d. archaeological methods and expectations of volunteer service; and

e. agency point-of-contact and vandalism reporting procedures (pursuant to R455-17).

C. Training will be of an appropriate duration to cover above topics.

**R455-16-4. Certification of Volunteers.**

A. After successful completion of the training program as established by the Division, its agency partners, and the description in Section R455-16-2, the volunteer will sign appropriate forms, including the Volunteer Services Agreement, Code of Ethics, and Photographic Release.

B. The Division shall retain a copy of these agreements for the duration of the volunteer's service.

**R455-16-5. De-Certification of Volunteers.**

A. If a volunteer quits the Utah Cultural Site Stewardship Program at any time, the volunteer will lose certification upon such termination of service and must return any training or archaeological site location information obtained through the Utah Cultural Site Stewardship Program.

B. If a volunteer has been convicted of a crime under the "Cultural Sites Protection Act" under Section 76-6-903, the Division may de-certify that volunteer.

C. If a volunteer has been convicted of a civil or criminal penalty under the federal Archeological Resources Protection Act, under Section 16 U.S.C 470, the Division may de-certify that volunteer.

D. If a volunteer has otherwise breached a provision of the Volunteer Services Agreement or Code of Ethics the Division may terminate and de-certify the volunteer.

**R455-16-6. Documentation of Volunteer Hours and Supervision of Volunteers.**

A. The Division shall require a volunteer to document the hours donated by the volunteer.

B. The Division shall ensure that volunteers are adequately supervised for the work they are asked to perform. Supervisors may

include, Division personnel, federal or state agency personnel, and archaeologists holding a Public Lands Policy Coordinating Office Principal Investigator permit.

**KEY: cultural stewardship, archaeology, volunteers, public lands**

**Date of Enactment or Last Substantive Amendment: 2021**

**Authorizing, and Implemented or Interpreted Law: 9-8-208**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R455-17	Filing No. 53298

**Agency Information**

<b>1. Department:</b>	Heritage and Arts	
<b>Agency:</b>	History	
<b>Room no.:</b>	218	
<b>Building:</b>	Rio Grande Depot	
<b>Street address:</b>	300 S Rio Grande St	
<b>City, state:</b>	Salt Lake City, UT	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Christopher W. Merritt	801-245-7263	cmerritt@utah.gov
Alycia Rowley	801-245-7263	aaldrich@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R455-17. Cultural Site Stewardship Program Vandalism Reporting Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
Under the authority of Section 9-8-208 the Utah Division of State History (Division) will create and maintain a Cultural Site Stewardship Program. This rule provides procedures on how the Division will report vandalism of a cultural site to the appropriate land-managing authority.
<b>4. Summary of the new rule or change:</b>
This rule outlines the procedures that the Division will employ when volunteers or Division staff identify an archaeological or cultural site has been vandalized since a previous site stewardship visit and protocols for in-progress vandalism discoveries.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

None--The rule establishes rules for reporting vandalism. It does not require any expenditures.

**B) Local governments:**

None--The rule establishes how vandalism should be reported. It does not require any action or expenditures from local governments.

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

None--This rule does not apply to small businesses.

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

None--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**):

None--This rule does not financially impact persons.

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

None--This rule does not have any 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.)

<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 Executive Director of the Department of Heritage and Arts, Jill Love, 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 impact on businesses.

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

Jill Love, 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 9-8-208

**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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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>	Josh Loftin, Communications Director	<b>Date:</b>	01/25/2021
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**R455. Utah Division of State History.**

**R455-17. Cultural Site Stewardship Program Vandalism Reporting Procedures.**

**R455-17-1. Purpose and Authority.**

Under the authority of Section 9-8-208 the Utah Division of State History shall create and maintain a Cultural Site Stewardship Program (the "Program"). This rule provides procedures on how the Division shall report vandalism of a cultural site to the appropriate land-managing authority.

**R455-17-2. Definitions.**

All definitions in this Rule are found within UCA 9-8-208(1) and its subparts.

**R455-17-3. Vandalism Reporting Responsibilities.**

Under Section 9-8-208, the Division and its volunteers under the Utah Cultural Site Stewardship Program have a responsibility to report vandalism to appropriate land managing authority.

A. Safety of volunteers and staff is of primary concern, thus any act of vandalism either in the past or in-progress shall be reported to appropriate land managing agencies by Program staff or volunteers promptly.

B. Each federal or state agency participating in the Program will maintain an active point-of-contact at the agency for reports of vandalism.

C. Each Program volunteer and staff shall provide a report of vandalism to the appropriate land managing agency point-of-contact in a timely fashion. The report may include written description, photographs, and locational information.

D. A copy of the report shall be provided to the Utah Cultural Site Stewardship Program Coordinator or designee at the Utah Division of State History.

**R455-17-4. Records.**

A. The Division shall maintain records of any reported vandalism and make those reports available to the appropriate land managing agency point-of-contact upon request.

B. Records of vandalism may not be publicly accessible if they contain private, controlled, or protected information about archaeological site locations, consistent with Government Records and Management Act under Section Utah Code 63G-2-3.

**KEY: cultural stewardship, vandalism, public lands, preservation**

**Date of Enactment or Last Substantive Amendment: 2021**

**Authorizing, and Implemented or Interpreted Law: 9-8-208**

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R649-1</b>	<b>Filing No. 53303</b>

**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.

NOTICES OF PROPOSED RULES

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

There are 303 small business oil and gas operators (for a complete listing of North American Industry Classification System (NAICS) codes used in this analysis, please contact the agency) in the . 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.

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

There are a total of 4 non-small business oil and gas operators (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . 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.)

<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 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.)

**A) Comments will be accepted until:** 03/17/2021



<b>10. This rule change MAY become effective on:</b>	03/24/2021
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>	John Baza, Director	<b>Date:</b>	01/29/2021
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**R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**

**R649-1. Oil and Gas Definitions.**

**R649-1-1. Definitions.**

"Authorized Agent" means a representative of the director as authorized by the board.

"Aquifer" means a geological formation including a group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Application for Permit to Drill, Deepen or Plug Back" or "APD" means the Form 3 submission required under Section R649-3-4 with the division.

"Artificial Liner" means a pit liner made of material other than clay or other in-situ material [and] that meets the requirements of Section R649-9-3, Permitting of Disposal Pits.

"Authority for Expenditure" or "AFE" is a detailed written statement made in good faith by an operator memorializing the total estimated costs to be incurred in the drilling, testing, completion and equipping of a well for oil and gas operations.

"Barrel" means 42 gallons at 60 degrees Fahrenheit at atmospheric pressure.

"Board" means the Board of Oil, Gas and Mining.

"Carrier, Transporter or Taker" means any person moving or transporting oil or gas away from a well or lease or from any pool.

"Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Central Disposal Facility" means a facility that is used by one or more producers for disposal of exempt E and P wastes and that the operator of the facility receives no monetary remuneration, other than operating cost sharing.

"Class II Injection Well" means a well that is used for:

1. the disposal of fluids that are brought to the surface in connection with conventional oil or natural gas production and that may be commingled with wastewater produced from the operation of a gas plant that is an integral part of production operations, unless that wastewater is classified as a hazardous waste at the time of injection;

2. enhanced recovery of oil or gas; or

3. storage of hydrocarbons that are liquids at standard temperature and pressure conditions.

"Closed System" means 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.

## NOTICES OF PROPOSED RULES

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(4) and (12) to be provided to an owner and which includes an offer to lease if the owner is an unleased owner, and an offer for the owner to directly participate financially, in proportion to the owner's interest in the drilling, testing, completion, equipping and operation of the subject well and which includes:

1. the approximate surface and, bottom hole location of the subject well by county, township, range, section, quarter-quarter section or substantially equivalent lot, and footages from directional section lines;

2. the proposed well name;

3. the proposed total distance from the surface of the ground to the terminus measured along the vertical and lateral components if the well is a horizontal well;

4. the proposed total depth;

5. the objective productive zone and the approximate depth and locations of producing intervals in the borehole;

6. the approximate date upon which the subject well was or will be spud;

7. a joint operating agreement proposed in good faith by the operator for operation of the drilling unit upon which the subject well is to be drilled;

8. an AFE for the subject well;

9. a statement that a refusal to agree to either lease or participate in the subject well may result in the imposition of the statutory risk compensation award allowed under Subsection 40-6-6.5(4)(d)(i)(D) of between 150% and 400% as determined by the board; and

10. a statement that any initial compulsory pooling order may apply to subsequent wells within the drilling unit including any statutory risk compensation award imposed under Utah law pursuant to Subsection 40-6-6.5(12).

"Oil" means crude oil or condensate or any mixture thereof, defined as follows:

1. "Crude Oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

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.

"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.

NOTICES OF PROPOSED RULES

"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:** ~~2021 July 27, 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. 53306

**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 ("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.

**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 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.)

**A) Comments will be accepted until:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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>	John Baza, Director	<b>Date:</b>	01/29/2021
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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.

## NOTICES OF PROPOSED RULES

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 ~~any~~ agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of ~~any~~ of such actions.

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, ~~any~~ respondents, ~~any~~ persons permitted by the board to intervene in the proceeding, and ~~any~~ persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

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, the~~ board, or its appointed hearing examiner, shall be considered the presiding officer of ~~any~~ appeals or informal adjudicative proceedings ~~which that is commenced before the division as well as 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 ~~all~~ each party~~ies~~y.

1.5. Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

1.6. ~~Any~~Any parties shall have access to information contained in the agency's files and to ~~all~~any materials and information gathered in any investigation, to the extent permitted by law.

1.7. Intervention is prohibited, except where a federal statute or rule requires that a state permit intervention.

1.8. ~~Each~~Each hearing[s] shall be open to ~~all~~any party~~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 party~~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 ~~any~~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 Order of the Division~~Order~~.**

1. A request for review of a ~~final~~ 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 of the division 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 party~~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.

NOTICES OF PROPOSED RULES

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 of the division in an adjudicative proceeding must seek review of that ~~final~~ order of the division 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~~2021

**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. 53305

**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

Contact person(s):		
<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

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

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.

**4. Summary of the new rule or change:**

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**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

There is a total of one state agency, the Division of Oil, Gas and Mining (Division), that will be associated with this proposed rule change. There is no estimated cost to the state as these amendments are administrative.

**B) Local governments:**

This rule does not apply to local governments.

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

There are 303 small business oil and gas operators (for a complete listing of North American Industry Classification System (NAICS) codes used in this analysis, please contact the agency) in the . 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.

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

There are a total of 4 non-small business oil and gas operators (for a complete listing of NAICS codes used in this analysis, please contact the agency) in the . 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.)

<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 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:** 3/17/2021

**10. This rule change MAY become effective on:** 3/24/2021

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>	John Baza, Director	<b>Date:</b>	01/29/2021
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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 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 owner or operator 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 owner or operator 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 owner or operator 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 harm than it would prevent;

1.5.3. where the owner's or operator's action to abate the violation within 90 days would violate safety standards; or

1.5.4. other circumstances beyond the control of the owner and operator as deemed by the division.

2. Division Enforcement Order.

2.1. The division shall immediately order a cessation of oil and gas operations in a division enforcement order 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 a division enforcement 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 division enforcement order shall specify the time by which abatement shall be accomplished.

2.4. When a notice of violation has been issued and the owner or operator 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 step 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 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) Rule R649-8 reporting violations;

(g) Section R649-9-2 improperly secured disposal facility violations;

(h) Section R649-9-2 minor leaks and spills violations;

(i) Section R649-9-3 garbage and solid waste in evaporation pit violations;

(j) Section R649-9-3 inadequate supervision violations;

(k) Section R649-9-4 failure to monitor leak detection system violations;

(l) Section R649-9-10 inadequate construction notification violations;

(m) Section R649-9-11 facility records for review violations; and

(n) 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;

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(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. A notice of violation, division enforcement order, or administrative penalty assessment issued by the division may be appealed by filing a request for agency action with the division within 30 calendar days of the assessment following the procedures provided in Rule R649-10-3.

**KEY: oil and gas law**

**Date of Enactment or Last Substantive Amendment: 2021**

**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.):	R850-12	Filing No. 53308

**Agency Information**

1. Department:	School and Institutional Trust Lands
Agency:	Administration

<b>Street address:</b>	675 E 500 S, Suite 500	
<b>City, state:</b>	Salt Lake City, UT 84102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Lisa Wells	801-538-5154	lisawells@utah.gov
Michelle McConkie	801-538-5183	meastmconkie@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R850-12. Prohibited and Restricted Use of Trust Lands
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this new rule is to provide parameters as to what activities are prohibited or restricted on trust lands. This will help both the public and agency staff to know how trust lands may be used.
<b>4. Summary of the new rule or change:</b>
This new rule will set forth prohibited uses on trust lands and will also describe restrictions on otherwise permitted uses of trust lands.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule describes regulations but is not associated with any cost. Therefore, the state budget would not be impacted.
<b>B) Local governments:</b>
This rule describes regulations but is not associated with any cost. Therefore, local governments would not have any costs or savings due to this rule.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule describes regulations but is not associated with any cost. Therefore, small businesses would not have any costs or savings due to this rule.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This rule describes regulations but is not associated with any cost. Therefore, non-small businesses would not have any costs or savings due to this rule.

<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 describes regulations but is not associated with any cost. Therefore, persons other than small businesses, non-small businesses, state, or local government entities, or public or private organizations would not have any costs or savings due to this rule.

<b>F) Compliance costs for affected persons:</b>
This rule describes regulations but is not associated with any cost and is not related to compliance matters. Therefore, there are no compliance costs associated with this 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.)

<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 Director of School and Institutional Trust Lands Administration, David Ure, 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>
There are no fiscal impacts due to this new rule.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
David Ure, 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>		
Subsection 53C-2-301(1)	Subsection 53C-1-302(1)	28 Stat. 107-112 Utah Enabling Act of 1894, Sections 6, 8, 10, 12
Article X	Article XX	

**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>	03/17/2021

<b>10. This rule change MAY become effective on:</b>	03/24/2021
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>	David Ure, Director	<b>Date:</b>	02/01/2021
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**R850. School and Institutional Trust Lands, Administration. R850-12. Prohibited and Restricted Uses of Trust Lands. R850-12-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, Section 53C-1-302(1)(a)(ii) of the Utah Code, and Board Policy #2021-01. The purpose of this rule is to prohibit certain activities and to permit with limitations other activities on trust lands.

**R850-12-200. Definitions.**

In addition to the terms defined in R850-1, the terms below, when used in Section R850-12 are defined as follows:

1. "Authorized Route" means a route:
  - (a) designated as open to the public for motor vehicle use under Subsection R850-110-200;
  - (b) established by grant or dedication to a governmental entity for public use; or
  - (c) as otherwise established by law for public use.
2. "Low-impact activities" means activities that have minimal or negligible impact to trust lands.

**R850-12-300. Prohibited Activities.**

In addition to Section 53C-2-301(1), except as authorized in writing by the agency, the following activities are prohibited on trust lands:

1. posting or distributing printed materials;
2. managing or controlling trust lands, including prohibiting, preventing, or obstructing public entry on trust lands or blocking access to an Authorized Route;
3. activities authorized under this Section R850-12 that continue for more than 15 consecutive days or more than 15 days within any 30-day period;
4. parking a motorized or recreational vehicle more than 100 feet from an Authorized Route;
5. leaving unattended personal property on trust lands for longer than 72 hours;
6. using or possessing explosives, fireworks, or firecrackers;
7. using poisons, herbicide, insecticides, or pesticides;
8. using or possessing any noxious weeds or noxious weed seeds, as designated in Sections R68-8-2 and R68-9-2, and/or feeds, supplements or forages containing any, in whole or in part, of the weeds designated as noxious weeds in Section R68-9-2;
9. metal detecting;
10. searching for treasure, artifacts, or other natural or man-made items;
11. leaving or disposing of human or animal fecal matter unless:
  - (a) the fecal matter is buried at least 8 inches deep and at least 200 feet from any campsite or water source; and
  - (b) all toilet paper and hygiene products are removed from trust lands;
12. installing new technical rock climbing or slack lining equipment or hardware;
13. affixing devices including trail cameras to structures, trees, or any other natural or made-made fixture;
14. using or possessing glass containers outside of enclosed vehicles, tents, trailers, or recreational vehicles, except that removing glass discarded by others on trust lands is permitted;
15. constructing, using, moving, occupying, or destroying any structures on trust lands including fences, water control devices, roads, surveys and section markers, or signs;

16. destructing, marking, or defacing trust lands, including without limitation, cross-country travel using human-powered, mechanized or motorized vehicles (other than approved mobility devices for the impaired or over-snow travel authorized pursuant to R850-110-400), creating new routes, human-powered, mechanized or motorized vehicle travel on routes other than Authorized Routes;

17. carving tree trunks, marking/defacing rocks, graffiti, destruction of natural formations on trust lands (e.g. knocking over sandstone pillars), tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains;

18. any activity prohibited under any other local, state, or federal statute, ordinance, rule, or regulation;

19. any activity that requires authorization from the agency or any other local, state, or federal authority under any local, state, or federal statute, ordinance, rule, or regulation.

#### **R850-12-400. Non-Commercial Low-Impact Activities.**

Non-commercial low-impact activities are permitted on trust lands without written authorization from the agency, subject to the prohibitions and restrictions in this Section R850-12, unless written authorization is required for such activity by the agency's statutes, rules, director's findings, handbook, or other publication available to the public.

#### **R850-12-500. Non-Commercial Camping.**

1. A person may maintain a non-commercial low-impact campsite on trust lands without written authorization from the agency, subject to the prohibitions and restrictions in this Section R850-12.

2. A person may not maintain a campsite in the same location for more than 15 consecutive days or relocate a campsite to any trust lands within a 5-mile radius of the original campsite for at least 15 consecutive days following the end of the camping period.

3. A person may not maintain a campsite within 100 feet from any water source.

#### **R850-12-600. Animals on Trust Lands.**

1. A person may bring an animal onto trust lands without written authorization, subject to the prohibitions and restrictions in this Section R850-12. These prohibitions and restrictions do not apply to those activities permitted under a valid grazing permit or other written authorization issued by the agency.

2. A person may not leave an animal unattended on trust lands unless the animal is restrained.

3. A person may not bring more than 16 animals at a time onto trust lands.

4. A person may not bring onto trust lands any animal reasonably likely to cause physical harm to people, other animals, or property.

5. A person may not engage in commercial dog training on trust lands.

6. A person may not board any animal within 100 feet from any water source, riparian area, or culinary system on trust lands.

#### **R850-12-700. Fires and Burning Material.**

1. Campfires on trust lands are permitted without written authorization, subject to the prohibitions and restrictions in this Section R850-12, if:

(a) the campfire is within an established fire ring;

(b) the fire is not left unattended;

(c) all adequate provisions are taken to prevent the fire from spreading, including having a readily accessible means to extinguish a fire available;

(d) all ashes, unburned fuel, and trash are removed from trust lands; and

(e) the fire is completely extinguished when not in use and prior to being left unattended.

2. A person may not construct a new fire ring on trust lands without written authorization from the agency.

3. A person may only burn clean, dry, cord-type firewood or charcoal on trust lands. Burning or discarding materials containing nails, screws, or other metal hardware (such as from wood pallets and construction debris) is prohibited.

4. A person may collect downed wood or woody vegetation for fires on trust lands but may not cut standing vegetation (living or dead). A person may not remove firewood from trust lands without written authorization from the agency.

5. A person may not throw or drop a lighted cigarette or other burning material onto trust lands.

#### **R850-12-800. Target Shooting.**

1. A person may engage in target shooting on trust lands without authorization, subject to the prohibitions and restrictions in this Section R850-12.

2. A person engaged in target shooting on trust lands may only use shooting targets manufactured or assembled for that purpose and that do not explode, ignite, shatter, or pose a hazard to people, animals, or property, except that clay pigeons are permitted.

3. A person may not shoot at any target that is on, over, or within 50 feet of a water source. A person may not engage in target shooting from or within 50 feet of a water source.

4. A person that brings shooting targets or ammunition onto trust lands shall remove the shooting targets and ammunition, including spent shells, from trust lands.

#### **R850-12-900. Agency may Limit or Prohibit Activities.**

1. The agency may limit or prohibit any activities authorized by this Section R850-12 for the reasons and time periods deemed necessary by the agency to protect trust lands from damage, preserve trust lands, protect people or animals from harm, or for any other reason that the agency determines is in the best interest of its beneficiaries.

2. To further limit or prohibit an activity on trust lands, the agency may:

(a) post notice at the area, trailhead, or campsite to which the limitation or prohibition applies; or

(b) post notice of the limitation or prohibition on its website.

3. The agency may reduce the limitations or prohibitions in this Section R850-12 by complying with Subsection R850-12-900(2).

#### **KEY: prohibited and restricted uses of trust lands, management, administrative procedures**

**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1); 53C-2-301(1)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R850-41	Filing No. 53309

**Agency Information**

<b>1. Department:</b>	School and Institutional Trust Lands	
<b>Agency:</b>	Administration	
<b>Street address:</b>	675 E 500 S, Suite 500	
<b>City, state:</b>	Salt Lake City, UT 84102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michelle McConkie	801-538-5183	meastmconkie@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R850-41. Rights of Entry
<b>3. Purpose of the new rule or reason for the change:</b>
This repeal and reenact revises the Rights of Entry rule to give School and Institutional Trust Lands Administration (SITLA) discretion to charge for non-commercial uses of trust lands and to update out of date language, such as the requirement that applications be sent via mail or in-person.
<b>4. Summary of the new rule or change:</b>
This rule is revised to update outdated language on items such as receiving applications. This rule currently says that applications must be received via mail or in-person and do not allow for electronic receipt of applications. In addition, this rule currently provides that non-commercial uses of land that are less than 15 days do not require a permit. This does not take into account the potential impact such non-commercial uses would have on the lands and is not in the best interest of SITLA's beneficiaries.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. The ability of SITLA to charge for non-commercial, short term uses of trust lands may increase

revenue received by the state on behalf of SITLA 's beneficiaries. It is not anticipated that any costs will be incurred by the SITLA due to this rule repeal and reenactment. However, costs may be incurred by a state entity other than SITLA if it applied for a right of entry permit for the use of trust lands.

The potential for additional revenue or additional costs is unknown at this time since the revenue and costs would be based on future uses of trust lands that are not yet known.

**B) Local governments:**

The purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. Local governments would only be affected as a result of this repeal and reenactment if they applied for a right of entry permit for the use of trust lands.

The potential for such additional costs is unknown at this time since the revenue would be based on future uses of trust lands that are not yet known.

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

The purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. Small businesses would only be affected as a result of this repeal and reenactment if they applied for a right of entry permit for the use of trust lands.

The potential for such additional costs is unknown at this time since the revenue would be based on future uses of trust lands that are not yet known.

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

The purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. Non-small businesses would only be affected as a result of this repeal and reenactment if they applied for a right of entry permit for the use of trust lands.

The potential for such additional costs is unknown at this time since the revenue would be based on future uses of trust lands that are not yet known.

**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 purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. Persons other than small businesses, non-small businesses, state, or local government entities would only be affected as a result of this repeal and reenactment if they applied for a right of entry permit for the use of trust lands.

The potential for such additional costs is unknown at this time since the revenue would be based on future uses of trust lands that are not yet known.

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

The purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. No compliance costs will be charged due to these changes.

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

<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 Benefits</b>	<b>Fiscal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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**H) Department head approval of regulatory impact analysis:**

The Director of School and Institutional Trust Lands Administration, David Ure, 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 purpose of the repeal of the current rule and reenactment of the revised rule is to update out of date language and to allow SITLA to charge for uses of trust lands that are non-commercial and less than 15 days in duration. As such, no adverse fiscal impact for business is anticipated.

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

David Ure, 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):**

28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, 12	Subsection 53C-2-201(1)(a)	Subsection 53C-4-101(1)
Article X	Article XX	Subsection 53C-1-302(1)(a)(ii)

**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:** 03/17/2021

**10. This rule change MAY become effective on:** 03/24/2021

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>	David Ure, Director	<b>Date:</b>	02/01/2021
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**R850. School and Institutional Trust Lands, Administration.**

**[R850-41. Rights of Entry.**

**R850-41-100. Authorities.**

\_\_\_\_\_ This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of Trust Lands Administration lands including procedures for determining fair market value of those lands.

**R850-41-150. Planning.**

\_\_\_\_\_ Pursuant to Section 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

**R850-41-200. Rights of Entry on Trust Lands Administration Lands.**

\_\_\_\_\_ 1. The agency may issue non-exclusive right of entry permits on Trust Lands Administration lands when the agency deems it consistent with agency rules and trust responsibilities.

\_\_\_\_\_ 2. Commercial use of Trust Lands Administration lands: a right of entry permit shall be required for any person to use, occupy, or travel upon Trust Lands Administration land in conjunction with any commercial enterprise without regard to the incidental nature of the use, occupancy, or travel, except that a right of entry permit shall not be necessary when the use, occupancy, or travel is across authorized public roads or permitted under some other land use authorization issued by the agency and currently in effect.

\_\_\_\_\_ 3. Non-commercial use of Trust Lands Administration land shall not require a permit provided that the use shall not exceed 15 consecutive days and shall not conflict with an applicable land use or with a management plan. At the conclusion of the 15-day period, any personal property, garbage, litter, and associated debris must be removed by the user. The use may not be relocated on any other Trust Lands Administration land within a distance of at least two miles from the original site or be allowed to reestablish at the original site for 20 consecutive days. If, for any reason, a non-commercial, incidental user desires a document authorizing the use, the agency may issue a Letter of Authorization upon payment of an administrative charge.

\_\_\_\_\_ 4. Non-commercial uses of Trust Lands Administration land exceeding 15 consecutive days will require a right of entry permit.

**R850-41-300. Rights of Entry Acquired by Application.**

\_\_\_\_\_ Rights of entry on Trust Lands Administration lands may be acquired only by application and grant made in compliance with the rules and laws applicable thereto. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase a right of entry under the conditions contained in these rules.

**R850-41-400. Valuable Consideration for Right of Entry Permits.**

\_\_\_\_\_ The consideration for any right of entry permit granted under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R850-41-600.

**R850-41-500. Agency Contractors.**

\_\_\_\_\_ Any person doing work for the agency under a contract or other permit may enter upon Trust Lands Administration lands for the purpose and period of time authorized by the contract or other permit without obtaining a right of entry.

**R850-41-600. Right of Entry Fees.**

\_\_\_\_\_ The agency shall establish minimum fees for right of entry permits which may be based on the cost incurred by the agency in administering the right of entry permit and the fair market value of a proposed land use.

**R850-41-700. Application Procedures.**

\_\_\_\_\_ 1. Time of Filing. Applications for right of entry permits are received for filing in the office of the agency during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, are immediately stamped with the exact date of filing.

\_\_\_\_\_ 2. Non-refundable Application Fees. All applications must be accompanied with a non-refundable application fee as specified in R850-4. After review of the application, the agency shall notify the applicant of the fee pursuant to R850-41-600. Failure to pay the fee within 15 days of mailing of notification shall cause the denial of the application.

\_\_\_\_\_ 3. Refunds and Withdrawals of Applications.

\_\_\_\_\_ (a) If an application for a right of entry permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

\_\_\_\_\_ (b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the agency, unless otherwise ordered by the director for a good cause shown.

\_\_\_\_\_ 4. Application Review.

\_\_\_\_\_ (a) Upon receipt of an application, the agency shall review the application for completeness. The agency shall allow all applicants submitting incomplete applications at least 15 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to cure any deficiencies. Incomplete applications not remedied within the designated time period may be denied.

\_\_\_\_\_ (b) Application approval by the director constitutes acceptance of the applicant's offer.

**R850-41-800. Term of Rights of Entry.**

\_\_\_\_\_ Rights of entry granted under these rules shall normally be for no greater than a one-year term. Longer terms may be granted upon application based on a written finding that such a grant is in the best interest of the trust beneficiaries.

**R850-41-900. Conveyance Documents.**

\_\_\_\_\_ Each right of entry shall contain provisions necessary to ensure responsible surface management, including the following

provisions: the rights and responsibilities of the permittee, rights reserved to the permitter; the term of the right of entry; payment obligations; and protection of the Trust Lands Administration from liability for all action of the permittee.

**R850-41-1000. Bonding Provisions.**

1. Prior to the issuance of a right of entry, or for good cause shown at any time during the term of the right of entry, upon 15 days' written notice, the applicant or permittee may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the right of entry.

2. Bonds posted on rights of entry may be used for payment of all monies, rentals, royalties due to the permitter, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the right of entry.

3. Bonds may be increased or decreased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 15 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and Permittee, c/o Permittee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

(e) Due to the temporary nature of rights of entry, if the agency imposes or increases the amount of a bond, a stop work order may be issued by the agency to insure the adequacy of the bond prior to the completion of work or activities authorized by the right of entry permit.

**R850-41-1100. Conflicts of Use.**

The agency reserves the right to issue additional rights of entry or convey other interests in property on Trust Lands Administration land encumbered by existing rights of entry without compensation to the permittee.

**R850-41-1200. Amendments.**

Any holder of an existing right of entry permit desiring to change any of the terms thereof, shall make application following the same procedure as is used to make an application for a new right of entry. An amendment fee pursuant to R850-4 must accompany the amendment request along with other appropriate fees.

**R850-41-1300. Unauthorized Uses.**

A right of entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources.

**R850-41-1310. Prevention of the Spread of Noxious Weeds.**

1. In an effort to halt the spread of noxious weeds, trust lands are closed to:

(a) the possession, use or storage of hay, straw, or mulch which has not been certified as noxious weed free or noxious weed seed free, and

(b) the possession, use or storage of supplemental grain or grain products which do not meet the requirements of the "Utah Commercial Feed Act" standards.

2. These restrictions do not apply to:

(a) the use of pelletized feed by authorized occupants on trust lands,

(b) persons with Modified Grazing Permits or Agricultural Special Use Leases that provide for the use of these materials, or

(c) persons with authorization pursuant to R850-50-600(6).

**R850-41-1400. Right of Entry Assignments.**

1. A right of entry may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that the assignments are approved by the agency; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to agency procedures.

**R850-41-1500. Termination of Rights of Entry.**

Any right of entry permit granted by the agency on Trust Lands Administration land may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules. Based on a written finding, the director shall issue an appropriate instrument when terminating the right of entry for cause.]

**R850-41. Rights of Entry.**

**R850-41-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of Trust Lands Administration lands including procedures for determining fair-market value of those lands.

**R850-41-200. Right of Entry Permits on Trust Lands.**

1. The agency may issue non-exclusive right of entry permits on trust lands when the agency deems it consistent with agency rules and trust responsibilities.

2. The agency may establish categories and criteria for issuance of right of entry permits.

3. Events and activities that occur entirely on roads designated as open to motor vehicle use pursuant to R850-110-200 generally do not require a right of entry permit. The agency may require a right of entry permit for activities and events that the agency determines in its sole discretion may have impacts to adjacent trust lands.

**R850-41-300. Term of Right of Entry Permits; Termination.**

1. The agency may issue right of entry permits for one year or less, except that the agency may issue right of entry permits for longer terms for recurring annual events and other limited impact, ongoing, and non-exclusive uses that do not require a lease.

2. The agency may terminate a right of entry permit:

(a) on notice to permittee if there is a violation of the permit or of the R850 rules;

(b) on 60 days' notice to permittee if:

(i) the agency determines in its sole discretion that there are higher and better uses for the permitted property;

(ii) the agency intends to dispose of the permitted property;  
or

(iii) any management problems arise as determined in the sole discretion of the agency.

**R850-41-400. Permit Rates.**

The agency may establish right of entry permit rates based on the market value and income producing capability of the permitted property, the administrative burden of managing the permit, the potential impact to the permitted property, or any other criteria deemed reasonable by the agency.

**R850-41-500. Application Procedures.**

1. A person seeking a right of entry permit must submit an application to the agency, either in paper or electronic form.

2. The agency may deny a right of entry permit application for any reason.

3. The applicant shall pay all amounts due at the time of execution of the permit prior to the agency issuing the permit.

4. An applicant may withdraw a right of entry permit application by giving written notice to the agency.

**R850-41-600. Right of Entry Permit Provisions.**

Each right of entry must contain provisions necessary to ensure responsible surface management, including the following

provisions: the rights and responsibilities of the permittee, rights reserved to the agency; the term of the right of entry permit; payment obligations; and protection of the agency from liability for all action of the permittee.

**R850-41-700. Bonding.**

Prior to issuance of a right of entry permit or at any time during the permit term, the agency may require the applicant or permittee to post a bond or other financial guaranty with the agency in the form and amount determined by the agency to ensure compliance with all terms and conditions of the right of entry permit.

**R850-41-800. Assignments.**

1. A permittee may not assign a right of entry permit without the prior written consent of the agency. Any assignment made without the agency's consent is void.

2. The assignee must assume all obligations of permittee under the right of entry permit.

**R850-41-900. Amendments.**

A permittee may request an amendment of a right of entry permit by following the same procedure as is used to make an application for a new right of entry permit.

**KEY:** ~~[natural—resources]~~rights of entry, management, administrative procedures

**Date of Enactment or Last Substantive Amendment:** ~~2021~~February 7, 2012

**Notice of Continuation:** February 7, 2017

**Authorizing, and Implemented or Interpreted Law:** 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)

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

## NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R414-510	Filing No. 53295

### 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>
R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education

<b>3. Effective Date:</b>
01/27/2021
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to provide individuals concerned with the Coronavirus (COVID-19) Pandemic, a length-of-stay exemption at intermediate care facilities (ICFs), to help them qualify for services within the Community Supports Waiver (CSW) while the COVID-19 public health emergency continues.
<b>5. Summary of the new rule or change:</b>
This change allows individuals to request an exception to the minimum length-of-stay requirement in ICFs during the Coronavirus (COVID-19) public health emergency. It also sets forth criteria for these requests and for the Department of Health (Department) to make a final determination. Other technical changes are for consistency reasons only.
<b>6. Regular rulemaking would:</b>
X cause an imminent peril to the public health, safety, or welfare;
cause an imminent budget reduction because of budget restraints or federal requirements; or
place the agency in violation of federal or state law.

**Specific reason and justification:**  
 This emergency amendment is necessary to provide individuals concerned with COVID-19 the opportunity to qualify for CSW services.

**Fiscal Information**

**7. Aggregate anticipated cost or savings to:**

**A) State budget:**

The Department does not anticipate any impact to the state budget as waiver services fall within appropriations set forth by the Legislature. Further, there is no method to estimate additional costs of individuals who might avail themselves of the opportunity to receive this exemption.

**B) Local governments:**

There is no impact on local governments because they neither fund nor provide waiver services under the Medicaid program.

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

The Department does not anticipate any impact to small businesses as waiver services fall within appropriations set forth by the Legislature. Further, there is no method to estimate additional costs or revenue through individuals who might avail themselves of the opportunity to receive this exemption.

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

The Department does not anticipate any impact to Medicaid providers as waiver services fall within appropriations set forth by the Legislature. Further, there is no method to estimate additional costs or revenue to providers, or possible savings to individuals who might avail themselves of the opportunity to receive this exemption.

**8. Compliance costs for affected persons:**

The Department does not anticipate any costs to a single Medicaid provider as waiver services fall within appropriations set forth by the Legislature. Further, there is no method to estimate the additional cost of an individual who might avail himself of the opportunity to receive this exemption.

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

Businesses should see neither revenue nor costs as waiver services fall within appropriations set forth by the Legislature. Other possible additional costs or revenues are incalculable.

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

Richard G. Saunders, Executive Director

**Citation Information**

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

Section 26-1-5	Section 26-18-3	
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	01/26/2021
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education.**

**R414-510-2. Definitions.**

(1) "Departments" means the ~~[Utah]~~Department of Health and the ~~[Utah]~~Department of Human Services.

(2) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(3) "Guardian" means an individual~~[s]~~ who is legally authorized to make decisions on an individual's behalf.

(4) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(5) "Intermediate Care Facilities" means privately~~[n]~~ owned intermediate care facilities for individuals with intellectual disabilities.

(6) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state of Utah. The Departments consider a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days. Breaks in stay due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence, if due to health concerns related to Coronavirus (COVID-19), will not be considered a break in stay when evaluating Subsection R414-510-3(~~[5]~~1)(~~e~~).

(7) "Representative" means an individual, who is not a guardian, and does not have decision-making authority, but is identified as an individual who assists a potential Transition Program participant.

(8) "State staff" means employees of the Division of Medicaid and Health Financing or ~~[the Division of Services for People with Disabilities]~~DSPD.

(9) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(10) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

**R414-510-3. Eligibility Requirements for the Transition Program.**

(1) Waiver services are potentially available to an individual who:

- ([1]a) receives ICF benefits under the Medicaid State Plan;
- ([2]b) has been diagnosed with an intellectual disability or a related condition;
- ([3]c) meets ICF level[-]of[-]care criteria defined in Section R414-502-8;
- ([4]d) meets state funding eligibility criteria for ~~the Division of Services for People with Disabilities (DSPD)~~ found in Subsection 62A-5-102(4); and
- ([5]e) has at least a 12-month length of stay in any Medicaid-certified, privately[-]owned ICF located in Utah.

(2) The Department of Health may consider a length-of-stay exemption to Subsection (1)(e) in the following circumstance:

(a) an individual, or their representative, may request an exception to the minimum length-of-stay requirement during the COVID-19 public health emergency declared by the federal government or the state of Utah.

(3) To make a request for a length-of-stay exemption, an individual or their representative, must submit a written request to the Department of Health and include the rationale for the request, including

the anticipated risk if the individual remains in the intermediate care facility.

(4) Before deciding upon a request, the Department of Health:

(a) may consult with its healthcare-associated infections/antibiotic resistance (HAI/AR) program;

(b) shall consult with DSPD; and

(c) shall determine whether an alternative placement option is available.

(5) The Department of Health shall deny a request for exemption if funding is not available.

(6) Other eligibility and access requirements in this rule remain in effect.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: January 27, 2021**

**Notice of Continuation: October 12, 2016**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3**

**End of the Notices of 120-Day (Emergency) Rules Section**





# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R414-320	Filing No. 52944

### 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>City, state, zip:</b>	Salt Lake City, UT	
<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 catchline:</b>
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver
<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 26-18-3 requires the Department of Health (Health) to implement the Medicaid program through administrative rules while Section 26-1-5 authorizes the Department to adopt rules as necessary for program

implementation. Additionally, Section 1115 of the Social Security Act allows for demonstration projects that promote the objectives of Medicaid and the Children's Health Insurance Program (CHIP).

### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department did not receive any written comments regarding this rule.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department will continue this rule because it establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	01/25/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R455-3	Filing No. 51143

### Agency Information

<b>1. Department:</b>	Heritage and Arts
<b>Agency:</b>	History

<b>Building:</b>	Rio Grande Depot	
<b>Street address:</b>	300 S Rio Grande St	
<b>City, state, zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Josh Loftin	801-245-7205	jloftin@utah.gov
Christopher W. Merritt	801-245-7263	cmerritt@utah.gov
Alycia Rowley	801-245-7263	aaldrich@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R455-3. Membership, Sales, Gifts, Bequests, Endowments
<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>
Sections 9-8-206 and 9-8-207 authorizes the Division of State History (Division) to establish rules for handling disposition of proceeds and membership dues and make adjustments to prices of various publications.
<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 were received.
<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>
The continuation of this rule is justified to ensure the Division to allow for paid membership and private support for the Utah State Historical Society and the Utah Historical Quarterly and to ensure the funds do not lapse in accordance with Sections 9-8-206 and 9-8-207.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Josh Loftin, Public Information Officer	<b>Date:</b>	01/27/2021
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>		
<b>Utah Admin. Code Ref (R no.):</b>	R455-4	<b>Filing No.</b> 51132

**Agency Information**

<b>1. Department:</b>	Heritage and Arts	
<b>Agency:</b>	History	
<b>Building:</b>	Rio Grande Depot	
<b>Street address:</b>	300 S Rio Grande St	
<b>City, state, zip:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Josh Loftin	801-245-7205	jloftin@utah.gov
Christopher W. Merritt	801-245-7263	cmerritt@utah.gov
Alycia Rowley	801-245-7263	aaldrich@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R455-4. Ancient Human Remains
<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 9-8-309 defines the Antiquities Section's duties with respect to recovery, disposition, and determination of ownership of ancient human remains found on nonfederal lands that are not state lands in the . The primary purpose of Section 9-8-309 and this rule is to assure that ancient human remains are given respectful, lawful, and scientifically-sound treatment, that landowners are not harmed or burdened by a discovery of ancient human remains on their property, and to ensure that steps are taken to determine lawful ownership of recovered remains.
<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 were received.
<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>
The continuation of this rule is justified to ensure the Division of State History can continue to adhere to the requirement for Section 9-8-309 and respectfully and lawfully recover ancient human remains on state lands.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Josh Loftin, Public Information Officer	<b>Date:</b>	01/27/2021
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Josh Loftin, Public Information Officer	<b>Date:</b>	12/04/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	R455-8	<b>Filing No.</b>	51129
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	R512-44	<b>Filing No.</b>	51222
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**Agency Information**

<b>1. Department:</b>	Heritage and Arts		
<b>Agency:</b>	History		
<b>Building:</b>	Rio Grande Depot		
<b>Street address:</b>	300 S Rio Grande St		
<b>City, state, zip:</b>	Salt Lake City, UT 84101		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Josh Loftin	801-245-7205	jloftin@utah.gov	
Christopher W. Merritt	801-245-7263	cmerritt@utah.gov	
Alycia Rowley	801-245-7263	aaldrich@utah.gov	

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

**Agency Information**

<b>1. Department:</b>	Human Services		
<b>Agency:</b>	Child and Family Services		
<b>Building:</b>	MASOB		
<b>Street address:</b>	195 N 1950 W		
<b>City, state, zip:</b>	Salt Lake City, UT 84116		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Carol Miller	801-557-1772	carolmiller@utah.gov	
Jonah Shaw	801-538-4219	jshaw@utah.gov	

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

**General Information**

<b>2. Rule catchline:</b>
R455-8. Preservation Easements
<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>
Sections 9-8-503 and 9-8-504 authorize the Division of History (Division) to ensure the adequate handling of preservation easements and their proper recording.
<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 were received.
<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>
The continuation of this rule is justified to ensure the Division may accept easements that meet the required conditions in Section R455-8-3.

**General Information**

<b>2. Rule catchline:</b>
R512-44. Choose Life Adoption Support Restricted Account
<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-4a-102 authorizes the Division of Child and Family Services (Division) to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.
<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 were received.
<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>

Continuation of this rule is necessary in order for the Division to continue to administer the Choose Life Adoption Support Restricted Account.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Diane Moore, Director	<b>Date:</b>	12/16/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-259</b>	<b>Filing No. 51433</b>
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**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, zip:</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 catchline:</b>
R590-259. Dependent Coverage to Age 26
<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 31A-2-201(3) authorizes the insurance commissioner to make rules to implement the provisions of Title 31A, Insurance Code. Subsection 31A-2-212(5)(b) authorizes the insurance commissioner to require that insurers in Utah comply with the provisions of the Patient Protection and Affordable Care Act (PPACA) and the administrative rules adopted by the commissioner related to regulating health benefit plans. Subsection 31A-22-605(4)(a)(iv) authorizes the insurance commissioner to adopt rules relating to standards for coverage of dependents, among other matters.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Insurance Department has received no written comments regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule must remain active because it provides clarification and guidance to help insurers comply with both PPACA and Utah's insurance laws. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	01/22/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R657-63</b>	<b>Filing No. 51174</b>
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**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, zip:</b>	Salt Lake City, UT 84116	
<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 catchline:</b>
R657-63. Self Defense Against Wild Animals
<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>
Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Division of Wildlife Resources (Division) has not received any written comments regarding this rule. Any comments received in opposition to this rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division.

**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 purpose of this rule is to define conditions and circumstances under which a person is legally justified in killing or seriously wounding a threatening or attacking wildlife animal. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Rory Reynolds, DWR Interim Director	<b>Date:</b>	02/01/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R805-5</b>	<b>Filing No. 52007</b>

**Agency Information**

<b>1. Department:</b>	Regents (Board of)		
<b>Agency:</b>	University of Utah, Administration		
<b>Room no.:</b>	309		
<b>Building:</b>	Park Building		
<b>Street address:</b>	201 S President's Cir		
<b>City, state, zip:</b>	Salt Lake City, UT 84112-9009		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	

Robert Payne	801-585-7002	Robert.payne@legal.utah.edu
Scott Smith	801-585-7002	Scott.smith@legal.utah.edu

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

**General Information**

**2. Rule catchline:**

R805-5. Enforcement of No Smoking Areas at University of Utah Hospitals and Clinics

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

This rule is authorized by Sections 26-38-1 et seq., 53B-2-106, 63G-4-102, 76-6-206, and 76-8-701 through 76-8-718.

**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 during the specified time 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 should be continued as it sets forth the regulations that govern smoking in the vicinity of the University of Utah's Hospitals and Clinics. This rule reiterates the requirements set forth in the Utah Indoor Clean Air Act in Rule R392-510. It also sets forth expectations regarding use of designated smoking areas and it defines the protocols for enforcing this rule, as well as the sanctions to be applied for failure to comply with this rule.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Robert Payne, Deputy General Counsel	<b>Date:</b>	01/25/2021
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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

#### Purchasing and General Services

No. 53121 (Amendment) R33-1: Utah Procurement Rules, General Procurement Provisions  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53122 (Amendment) R33-2: Rules of Procedure for Procurement Policy Board  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53123 (Amendment) R33-3: Procurement Organization  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53124 (Amendment) R33-4: Supplemental Procurement Procedures  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53125 (Amendment) R33-5: Other Standard Procurement Processes  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53126 (Amendment) R33-6: Bidding  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53127 (Amendment) R33-7: Request for Proposals  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53128 (Amendment) R33-8: Exceptions to Standard Procurement Process  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53129 (Amendment) R33-9: Cancellations, Rejections, and Debarment  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53130 (Amendment) R33-10: Preferences  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53131 (Amendment) R33-11: Form of Bonds  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53132 (Amendment) R33-12: Terms and Conditions, Contracts, Change Orders and Costs  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53133 (Amendment) R33-13: General Construction Provisions  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53134 (Amendment) R33-15: Procurement of Design Professional Services  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53135 (Amendment) R33-16: Protests  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53136 (Amendment) R33-19: General Provisions Related to Protest or Appeal  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53138 (Amendment) R33-24: Unlawful Conduct and Ethical Standards  
Published: 12/15/2020  
Effective: 01/22/2021

NOTICES OF RULE EFFECTIVE DATES

Agriculture and Food

Plant Industry

No. 53237 (Amendment) R68-6: Utah Nursery Act  
Published: 01/01/2021  
Effective: 02/08/2021

No. 53241 (Amendment) R68-30: Independent Cannabis  
Testing Laboratory

Published: 01/01/2021  
Effective: 02/08/2021

No. 53177 (New Rule) R68-35: Academic Medical  
Cannabis Research

Published: 12/15/2020  
Effective: 01/22/2021

Alcoholic Beverage Control

Administration

No. 53233 (New Rule) R82-9: Event Permits  
Published: 12/15/2020  
Effective: 01/26/2021

Education

Administration

No. 53246 (Amendment) R277-116: Audit Procedure  
Published: 01/01/2021  
Effective: 02/09/2021

No. 53247 (Amendment) R277-550: Charter Schools -  
Definitions

Published: 01/01/2021  
Effective: 02/09/2021

No. 53248 (Amendment) R277-552: Charter School  
Timelines and Approval Processes

Published: 01/01/2021  
Effective: 02/09/2021

No. 53253 (Amendment) R277-625: Mental Health  
Screening Program

Published: 01/01/2021  
Effective: 02/09/2021

No. 53254 (New Rule) R277-627: Early Warning Program

Published: 01/01/2021  
Effective: 02/09/2021

No. 53250 (Amendment) R277-929: State Council on  
Military Children

Published: 01/01/2021  
Effective: 02/09/2021

Environmental Quality

Waste Management and Radiation Control, Radiation

No. 53211 (Amendment) R313-36: Special Requirements  
for Industrial Radiographic Operations  
Published: 12/01/2020  
Effective: 01/15/2021

No. 53212 (Amendment) R313-37: Physical Protection of  
Category 1 or Category 2 Quantities of Radioactive Material  
Published: 12/01/2020  
Effective: 01/15/2021

Human Services

Recovery Services

No. 53223 (Amendment) R527-300: Income Withholding  
Proceedings  
Published: 01/01/2021  
Effective: 02/10/2021

Insurance

Administration

No. 53229 (Amendment) R590-160: Adjudicative  
Proceedings  
Published: 12/15/2020  
Effective: 01/22/2021

No. 53230 (Repeal) R590-231: Workers' Compensation  
Market of Last Resort

Published: 12/15/2020  
Effective: 01/22/2021

No. 53245 (Amendment) R590-284: Corporate  
Governance Annual Disclosure Rule

Published: 01/01/2021  
Effective: 02/09/2021

Natural Resources

Water Rights

No. 53224 (New Rule) R655-18: Public Water Supplier 40  
Year Water Requirement Plan Standards

Published: 12/15/2020  
Effective: 01/22/2021

Regents (Board of)

Administration

No. 53159 (New Rule) R765-165: Concurrent Enrollment  
Published: 12/15/2020  
Effective: 01/28/2021

No. 53165 (New Rule) R765-571a: Procurement

Published: 12/01/2020  
Effective: 01/28/2021

Regents (Board of)

University of Utah, Commuter Services

No. 52918 (Amendment) R810-11: Appealing Parking  
Tickets  
Published: 12/15/2020  
Effective: 02/05/2021